

Bureau for Private Postsecondary and Vocational Education
Department of Consumer Affairs

Initial Statement of Reasons

Hearing Date:

November 16, 1999

Subject Matter of Proposed Regulations:

These regulations are necessary to carry out some of the mandates of the Private Postsecondary and Vocational Education Reform Act of 1989 as amended in 1997 and effective January 1, 1998 ("the Act"). The 1997 amendments, in part, called for a reduction in fees and a somewhat modified re-approval application process, which necessitated the re-engineering of the systems of the Bureau for Private Postsecondary and Vocational Education ("Bureau") to accommodate mandates in the legislation.

Article 1, Chapter 5, of Division 7.5 of the California Code of Regulations contains the maximum fees the Bureau may charge. The Bureau has amended those regulations to more accurately reflect the Bureau's actual cost to conduct a qualitative review and assessment of an institution's application for approval to operate. Because these cost vary depending the scope of the application, the number of learning sites, the number of and types of education programs, and whether or not the institution is subject to Article 7 of the Act, the fees also vary based on those elements. The Bureau also is amending those regulations to more accurately reflect the Bureau's actual cost to conduct a review and qualification determination for a Certificate for Authorization for Service, an agent's permit, and an agency authorization. Lastly, the Bureau is amending those regulations to reflect the recoupment of the Bureau's operational cost for activities other than qualitative reviews and assessments through annual fees, as contemplated by the Act.

Section(s) Affected:

These regulations will result in the amendment, repeal, and adoption of various Sections in Chapters 1,2,3,4 and 5 of Division 7.5 of Title 5 of the California Code of Regulations.

PREFACE

A. Introduction

Any analysis of the Bureau's regulations relating to fees must begin with a review and analysis of the Act's provisions relating to fees.

B. The Act's Provisions Relevant to Fees

There are several provisions of the Act that are relevant as a basis from which to discuss fee issues, including the following:

1. Provisions of General Application.

Section 94705 of the Act contains the initial, broad intent of the Legislature with respect to the Bureau and its operations. It states, in pertinent part, that:

It is further the intent of the Legislature to provide for the protection, education, and welfare of the citizens of California, its postsecondary educational institutions, and its students by providing for all of the following:

- (e) Recognizing the importance of providing adequate funding [for the Bureau's operations] through application and renewal fees and federal funding for the veteran's approval process to support the state's activities in implementing this chapter. [Emphasis added.]

Section 94722 provides that:

It is the intent of the Legislature that the bureau's approval and regulating responsibilities be funded solely through approval fees and federal funding provided to implement the approval process for courses offered to veterans by approved institutions. [Emphasis added.]

Section 94932(c)(3) provides, in pertinent part, that "The fee schedule [promulgated by the Bureau] shall provide adequate resources for the council [Bureau] to implement this chapter effectively."

In addition to those provisions relating to the Bureau's fees in general, there are several provisions relating to certain types of fees. For example, Section 94932(c)(1) provides, in pertinent part, that:

- (1) For the approval of private institutions operating under this chapter, the council [Bureau] shall charge an amount not to exceed the actual costs of approving or renewing the approval of the private institution. [Emphasis added.]

2. Provisions Applicable Only to Degree Programs

Section 94901(a), which applies to degree programs, provides, in pertinent part, that:

The application shall include a single fee based on the number of branches, satellites, and programs included within a single application in

order to cover the costs involved for those multisite and multiprogram reviews. If the application is for a renewal of an existing approval, the institution need only submit information necessary to document any changes made since the time its previous application was filed with the council [Bureau]. Fees for renewal applications will be based on the actual costs involved in the administrative review process. [Emphasis added.]

That section also provides that each institution offering degrees shall be subject to an on-site review and assessment and Section 94901(i) provides that the institution "shall be responsible for the expenses of the visiting team members including the council's staff liaison." [Emphasis added.]

3. Provisions Applicable Only to Non-Degree Programs.

Section 94915(b)(13), which applies to non-degree programs, provides, in pertinent part, that:

The application shall include a single fee based on the number of branches, satellites, and programs included within a single application in order to cover the costs involved for those multisite and multiprogram reviews.

Section 94915(c) provides that each institution shall be subject to an on-site review and assessment and Section 94915(d) provides that the institution "shall be responsible for the expenses of any visiting team members including the council's staff liaison." [Emphasis added.]

4. Provisions Governing Bureau's Fee Schedule.

Section 94932(c)(3) provides, in pertinent part, that "It is the intent of the Legislature that the council [Bureau] shall adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a larger annual fee than those with smaller student enrollments." Further, in Section 94932 (c)(2) the Legislature specifically required that the Bureau reduce its application fees for approval and re-approval, and annual fees, by a percentage based on the annual gross revenues of an institution.

5. Provisions Governing Fees to Cover Investigation Costs.

Section 94774.5(b) requires that the Bureau establish a "regular inspection program which shall include unannounced inspections." Section 94774.5(c)(7) authorizes the Bureau to order reimbursement of the costs of investigation and enforcement in accordance with Section 94935 of the Act or Section 125.3 of the Business and Professions Code. Sections 94835 and 94836 more specifically set forth the Bureau's duty to inspect and investigate institutions, and enforce the Act. Section 94935 provides that if the Bureau determines, after an investigation, that an institution has violated the Act, the Bureau may order the institution to pay the costs and expenses incurred in connection with the investigation and any civil or administrative proceeding involving the violation that was investigated. The Act does not specifically identify the mechanism by which the Bureau is to

recoup its costs for its regular inspection program, including "unannounced inspections" and other inspections that may not fall within the category specified in Section 94935.

6. Provisions Governing the Allocation of Revenues Between Approval and Enforcement.

Section 94932(b) provides that:

- (b) On and after January 1, 1998, a minimum of 50 percent of the funds appropriated to the council [Bureau] shall be used to cover the costs of enforcing all of the following:
 - (1) Enforcing the Act and the council's [Bureau's] regulations by taking actions against violators while ensuring due process [right to an administrative hearing] for all institutions.
 - (2) Ensuring that independent on-site evaluations and random and targeted inspections and audits of institutions are conducted, and that students have easy access to information concerning their rights to contract cancellation, withdrawal, refunds, and remedies.
 - (3) Mediating student complaints to achieve balanced outcomes for students and institutions.

The Act does not specifically identify the mechanism by which the Bureau will fund these enforcement activities.

7. Provisions Governing Funding and Administering the Student Tuition Recovery Fund.

Section 94945 authorizes the Bureau to fund the Student Tuition Recovery Fund ("STRF") through the assessment of a fee on each institution that is subject to the STRF. Subdivision (b) of that section authorizes the Bureau to deduct from the STRF fund "the reasonable costs of administration of the tuition recovery program," and subdivision (c) authorizes a deduction from the STRF fund for two other related purposes.

8. Relevant Statutory Provisions Relating to Qualitative Review and Assessment Fees.

The Act's only explicit references to the amount of the annual fee are found in Section 94932(c). Paragraph (1) of Section 94932(c) provides that the Bureau "shall adopt a fee schedule for all institutions approved under this chapter [the Act], including the maximum amounts to be charged for an institution's initial application and annual renewal." Paragraph (2) requires that on January 1, 1998, the Bureau reduce its fees for applications for approval and re-approval, and annual fees, by a percentage based on the institution's gross revenues.

Paragraph (3) of Section 94932(c) states, in pertinent part, that:

The fee schedule shall provide adequate resources for the council [Bureau] to implement this chapter [the Act] effectively. It is the intent of the Legislature that the council [Bureau] shall adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a larger annual fee than those with smaller student enrollments.

This provision is not new to the 1998 version of the Act (“the new Act”). It was contained in earlier versions of the Act (“the old Act”). Both the former Council’s (and now the Bureau’s) regulations and its fee schedule reflect an annual fee that is based on the institution’s gross revenues.¹

Title 5, CCR section 74006(c) provides that:

(c) Except as provided in subdivision (e),² the annual fee assessed to an institution shall be at least seven hundred dollars (\$700) and shall not exceed the lesser of one percent of the institution’s annual gross revenues or eight thousand dollars (\$8,000).

Pursuant to Section 94932(c)(2) of the Act, the Bureau’s fee schedule that was adopted as an emergency regulation (5 CCR section 74015(b)(4)) reduced the amount of the annual fee that was reflected in the Council’s fee schedule in effect on December 31, 1997, by the required percentages based on the annual gross revenues of the institution. The minimum fees were reduced to a range of from \$595 to \$665, and the maximums were reduced to a range of from \$4,250 to \$4,750.

However, Section 94932(c)(2) does not require that the fee reductions remain effective for a specific period of time. To the contrary, Section 94932(c)(3) provides that the Bureau may modify its fee schedule, may add or delete categories of fees, and may change the maximum amount that may be charged for fee categories, and sets forth the procedure that the Bureau must follow. That section provides that:

The council [Bureau] may propose modifications to the fee schedule to the Governor and the Legislature to add or delete categories of fees related to work performed by the council [Bureau] and propose to the Governor and the Legislature the maximum amount to be charged for each fee category added to the fee schedule. The fee schedule shall provide adequate resources for the council [Bureau] to implement this chapter effectively. It is the intent of the Legislature that the council [Bureau] adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a

¹ See, e.g., 5 CCR sections 74006 and 74015(b)(4).

² Subdivision (e) provides for an annual fee of up to \$100 for institutions that have been granted a religious exemption.

larger annual fee than those with smaller student enrollments. . . . The council [Bureau] shall annually present its proposed budget and fee schedule, penalty fees assessed for delinquent payments pursuant to regulations adopted by the council [Bureau] and additions and deletions of fee categories to the Department of Finance and the Joint Legislative Budget Committee for their review and approval as part of the annual budget process. The council [Bureau] shall annually publish a schedule of the current fees to be charged pursuant to this section and shall make this schedule generally available to the public. The fees may be increased annually up to the maximum allowable level by a majority vote of the council [Bureau], without any additional review and approval by the Office of Administrative Law. . . . Increases above the maximum level shall be changed through legislation enacted by the Legislature and signed by the Governor. [Emphasis added.]

Thus, the Legislature recognized that once the Bureau gained experience in administering and enforcing the Act, the Bureau might find that the maximum fees the Legislature established in Section 94932(c)(2) might not comport with the Legislative intent expressed in Section 94932(c)(3) that, “The fee schedule shall provide adequate resources for the council [Bureau] to implement this chapter effectively.” Therefore, the Legislature provided the mechanism by which the Bureau could make changes to all of its fees, including those established in Section 94932(c)(2).

C. Analysis of the Fee Provisions

The Bureau has interpreted the above quoted provisions, as a whole, to indicate a Legislative intent that the Bureau be funded based on fees imposed on the cost-causer, including, but not limited to, both an institution that applies for an approval and an institution that is the subject of an on-site review and assessment. In order to implement that intent by these regulations, the Bureau seeks to: (1) establish fees that, to the extent possible, reflect, with some degree of precision, the cost that the Bureau incurs in the particular Bureau activity caused by the cost-causer; and (2) establish a fee for as many as possible of the functions that can be allocated to a particular cost-causer.

It is important to note, however, that if one reads various of the provisions quoted above very literally, or in isolation, or in certain groups and ignoring other provisions, one can come to widely varying conclusions about the Bureau’s authority to impose and allocate costs among the various fees.

For example, a literal reading of Sections 94705(e) and 94722, quoted above, could lead one to the conclusion that the Legislature intended that all of the Bureau’s activities be funded solely through approval and re-approval application fees, and federal funding for the veterans’ program. However, such a literal reading would conflict with the Legislature’s repeated authorization to impose an annual fee,³ its authorization to require an institution to reimburse the expenses of an on-site review and assessment, including those incurred by Bureau staff,⁴ and of its provision that the Bureau may order

³ See, e.g., Sections 94932(c)(2) and (3).

⁴ See, e.g., Sections 94901(i) and 94915(d).

an institution to pay the Bureau's cost to investigate the institution.⁵ It also could be interpreted to mean that the Bureau has no authority to charge a fee for registration,⁶ an exemption, a certificate of authorization for service, an agent permit, or an agency authorization—activities for which the former Council for Private Postsecondary and Vocational Education (“Council”) has charged a fee for many years.

As another example, Section 94932(c)(1) provides, in pertinent part, that:

- (1) For the approval of private institutions operating under this chapter, the council [Bureau] shall charge an amount not to exceed the actual costs of approving or renewing the approval of the private institution. [Emphasis added.]

Read literally and in semi-isolation, this provision would appear to reflect a Legislative intent that the Bureau is not authorized to charge an approval or re-approval fee that exceeds, by any amount, the Bureau's actual cost to process the application. Such an interpretation also would seem to be supported by Sections 94901(a) and (i), 94915(b)(13) and (d), quoted above, which indicate that the amount of the approval fee is limited to the Bureau's actual cost to process the approval, and that the re-approval fee is limited to the Bureau's actual cost of the “administrative review” of the re-approval application.

If that were so, all other functions performed by the Bureau, such as enforcement, investigations, administration of the Student Tuition Recovery Fund (“STRF”), the writing and adoption of regulations, student complaint mediation and arbitration, maintenance of an electronic directory of institutions, and other tasks such as legal review and opinions, would have to be funded through other sources. Indeed, the Act supports that view to some degree in the provisions that authorize the Bureau to recover its costs incurred in an investigation (but only if the investigation results in an enforcement or adverse action), to impose fines on violators, and to fund the administration of the STRF from STRF assessments.⁷

However, as indicated above, the Bureau will not be able to recover 100 percent of its inspection, investigation, and enforcement costs through orders to pay costs because many of the inspections may not fall into the category of those for which reimbursement of cost is authorized. Further, the Bureau's fee schedule does not include fees for many functions it performs, such as the writing and adoption of regulations, student complaint mediation and arbitration, maintenance of an electronic directory of institutions, or legal opinions on issues that arise. Nor is the Bureau likely ever to obtain approval from the Legislature or OAL to adopt fees for those types of functions.

⁵ See, e.g., Section 94935.

⁶ In interpreting those and other of the Act's provisions, OAL originally took the position that the Bureau did not have authority to charge a fee for registration.

⁷ See, e.g., Sections 94774.5(c)(7), and 94935 with respect to funding for investigation costs. See, e.g., Sections 94945(b) and (c) with respect to funding for the administration of the STRF.

The point here is that, as is often the case, the Act is extremely ambiguous with respect to the appropriate sources of funding for many of the Bureau's activities related to implementing and enforcing the Act. Since the Legislature did not appropriate to the Bureau general fund monies, in addition to the amounts the Bureau may collect in fees, for the operations of the Bureau, it follows that in determining the meaning of the above provisions one must answer the question, "What did the Legislature intend would be the source of the Bureau's funding for those functions for which it did not specifically provide a fee?"

In interpreting a statute, the courts have held that:

"The fundamental rule of statutory construction is that the court should ascertain the legislative intent so as to effectuate the purpose of the law. To this end, every statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect. [Citation.] Legislative intent will be determined so far as possible from the language of the statutes, read as a whole. If the words of an enactment, given their ordinary and proper meaning, are reasonably free from ambiguity and uncertainty, the court will look no further to ascertain the legislative intent. In the construction of a statute, the office of the judge is simply to ascertain and declare what is contained therein, not to insert what has been omitted, or to omit what has been inserted. However, courts will not infer a legislative intent that is capricious or unconstitutional if the statutory language admits of an alternative interpretation which would serve the statutory policy and render application of law reasonable and just. An absurd and unjust result will not be ascribed to the Legislature. [Citation.]"⁸

Thus, the guiding principle is the broad Legislative intent of a statutory scheme. A review and harmonization of all of the sections quoted above, coupled with the fact that the Legislature did not appropriate to the Bureau any general fund monies, clearly reflects an overarching Legislative intent that all of the Bureau's activities to implement and administer the Act be funded through fees charged by the Bureau, and federal funding of veterans' programs.

The Office of Administrative Law ("OAL") also recognized this overarching Legislative intent. When the Bureau was discussing its proposed emergency registration regulations with OAL, OAL staff opined that it would interpret Section 94932(b) as authorization for the Bureau to charge approval and re-approval fees that are sufficient to cover not only all of the Bureau's costs to approve or renew the approval of an institution, but also an additional 50 percent of that amount to cover the cost of the enforcement activities specified in Section 94932(b).

Based on all of the above, the following seems to be a fair and reasonable analysis and interpretation of all of the provisions quoted above:

⁸ *County of Yolo v. Los Rios Community College District* (1992) 5 Cal.App.4th 1242, 1248-1249, 7 Cal.Rptr.2d 647, 650, quoting *County of Fresno v. Clovis Unified School District* (1988) 204 Cal.App.3d 417, 426-427, 251 Cal.Rptr. 170.

- (1) The Legislature's overarching intent is that the Bureau charge sufficient fees to cover all of the costs of its operations, except for those covered by federal funding for the veterans' program.
- (2) Secondly, it is the Legislature's intent that, to the extent possible, the Bureau's approval and re-approval fees should bear some reasonable relationship to the Bureau's actual costs to process those applications, and that at least the annual fee bear some reasonable relationship to the size of the institution.
- (3) The Legislature also must have recognized that: (a) the Bureau will not be able to recover all of its investigation, inspection, and enforcement costs from the institutions that cause those costs; (b) the Bureau may incur STRF administration costs in excess of the amount authorized to be appropriated from the STRF fund for those costs; (c) the Act requires that the Bureau undertake other activities for which no specific funding mechanism is established, such as complaint mediation,⁹ provision of an electronic directory of institutions,¹⁰ provision of an electronic annual report,¹¹ the development of a strong, vigorous, and widely respected sector of private postsecondary and vocational education;¹² writing and adoption of regulations,¹³ incidental legal services, etc.; and, (d) the Legislature gave the Bureau powers and responsibilities in addition to those which the Council had (such as granting additional exemptions, including for "high performance" institutions), the implementation of which will cause the Bureau to incur additional costs.
- (4) Therefore, it seems reasonable to conclude that the Legislature intended to authorize the Bureau either to: (a) charge fees, including but not limited to, the approval, re-approval, amended changes and annual fees, that will be sufficient to recover not only all of the Bureau's costs and expenses of processing the approval or re-approval, but also all of the Bureau's other costs of implementing, administering, and enforcing the Act which the Bureau is not able to recover through other revenue sources; or (b) charge approval and re-approval fees that reflect the actual cost of processing those applications, and charge an annual fee and other fees that will be sufficient to recover all of the Bureau's other costs of implementing, administering, and enforcing the Act which the Bureau is not able to recover through the approval and re-approval fees. The first alternative would allow the Bureau to spread over a broader fee base the Bureau's cost to conduct activities other than the processing of approval and re-approval applications. The second alternative would limit the fee for processing approval and re-approval applications to the cost of only those functions, thus requiring that the Bureau recoup its

⁹ See, e.g., Sections 94932(b)(3), 94778(b), and 94960(b).

¹⁰ See, Section 94774(e).

¹¹ See, Section 94861(d).

¹² See, Sections 94705(i) and 94770.

¹³ See, Sections 94774(d) and 94778(a).

costs for all other functions from annual fees and any other fees the Bureau is authorized to charge.

D. Analysis of the Relevant Statutory Provisions Relating to Annual Fees.

The root on which the Bureau should determine its method of calculation of, and amount, of the annual fee should be Section 94932(c)(3)'s statement that, "It is the intent of the Legislature that the council [Bureau] shall adopt a fee schedule that reflects the size of the institution, . . ." However, in that same sentence, Section 94932(c)(3) further provides that an institution that enrolls a larger number of students should be required to pay a larger annual fee than an institution that enrolls a smaller number of students. This specific statement would seem to explain and interpret the requirement in the earlier part of that same sentence that the Legislature intends that the annual fee "reflect[s] the size of the institution." Certainly, the number of students that an institution enrolls is one element that can reflect the size of the institution. There also are other factors that also could reflect the size of the institution, such as gross revenues, profitability, number of sites, number of faculty, or square footage of the institution's facilities.

On the one hand, when Section 94932(c)(2) requires that the Bureau reduce the annual fees it charges, the reduction mandated by the Legislature is based not on the "size of the institution" or on the "number of students" enrolled by the institution but, rather, on the institution's annual gross revenues. Title 5, CCR section 74006 as adopted by the former Council, also bases the annual fee on the institution's annual gross revenues.

As stated above, the quoted portion of Section 94932(c)(3) is not new to the Act. Moreover, the Legislature is charged with knowledge of the Bureau's regulations and practices at the time that it amended the Act effective in 1998 through the adoption of AB 71. Therefore, it is reasonable to conclude that the Legislature determined that an institution's annual gross revenues is at least one of the bases that the Bureau might use to calculate the amount of the annual fee to be paid by an institution.

E. Conclusion

In summary, the Legislature intended that the Bureau charge fees sufficient to fund all of the Bureau's activities relating to the interpretation, implementation, and enforcement of the Private Postsecondary and Vocational Education Reform Act of 1989 (as amended effective January 1, 1998) ("the Act"). Approval and re-approval fees are to be based on the number of sites and number of programs included in the institution's application, and on the size of the institution. Re-approval fees also are to be based on the number of changes contained in a re-approval application. The Bureau has the legal authority to recover from an institution all of the costs and expenses incurred by the Bureau in conducting a qualitative review and assessment of the institution and its educational programs, including an on-site review and assessment of an institutions costs associated with the salaries of the Bureau personnel who participate in the site review. The Bureau also has the authority to recover, through an assessment of the site-visit cost, the travel, meals, and similar related expenses incurred by the site review team including the Bureau's staff, during an on-site review and assessment of an institution. However, the Act does not explicitly state that the Bureau may recover all of its costs and expenses related to a site review and assessment, other than travel, meals, and related expenses, as part

of an assessment on the institution of the on-site review expenses authorized in Sections 94901(i) and 94915(d). Therefore, it appears that the Legislature intended that those costs be recovered as part of the basic fee for conducting the qualitative review and assessment, rather than as a demand for reimbursement of costs.

Title 5. Education
Division 7.5 Private Postsecondary Education
Chapter 1. Bureau Administration
Article 1. General Provisions

§70000.

Definitions

Problem Addressed: The current regulations contain many terms that are defined in several different sections. Most of the terms are applicable to all institutions that are subject to the requirements of the Act.

Problem Addressed: To repeal the definitions in the original Section 70000 so that they can be added to the new Section 70000.

Factual Basis: Placing all of the definitions in one section provides for the Bureau and institutions a more convenient reference of terms, allows for greater consistency between the various provisions in the regulations, and eliminates institutions' possible confusion that could result from having the same terms defined in several different sections of the regulations.

Underlying Data: N/A

§70000.

Definitions

Subdivision (a):

Problem Addressed: Although the Private Postsecondary and Vocational Education Act was reorganized and rewritten, in part, in 1997, a simple and consistent terminology is still needed to communicate a reference to the legal authority provided in the new Act.

Specific Purpose: To amend the definition of "Act" to accurately reference in these regulations the Private Postsecondary and Vocational Education Reform Act of 1989, as amended in 1997, and effective January 1, 1998.

Factual Basis: Providing simple and consistent terminology to reference that portion of the Education Code that gives the Bureau legal authority and will assist the Bureau in communicating with its institutions and students and understanding the regulations.

Underlying Data: N/A

Subdivision (b):

Problem Addressed: This Council, the Bureau's predecessor, previously adopted a definition for "a vocational or recreational education." Subsequent to that adoption, the Council adopted a separate regulation that defines "recreational education." However, during subsequent adoption process, the Council inadvertently failed to repeal the word "recreational" from the section defining "a vocational or recreational education." It is redundant to define "recreational education" because it is already defined in the former subdivision (g) (proposed subdivision (y)).

Specific Purpose: To maintain the definition of "avocational education" that currently is in regulations.

Factual Basis: Repealing duplicative language from the regulations will assist the Bureau in maintaining compliance with the Administrative Procedures Act and will eliminate confusion by institutions that otherwise might have an unclear understanding as to the meaning of "recreational education".

Underlying Data: N/A

Subdivision (c):

Problem Addressed: A simple and consistent term is needed to communicate what constitutes an annual fee due from an institution to the Bureau.

Specific Purpose: To establish a definition for the fee required to be paid by an approved institution with the submission of its annual report.

Factual Basis: Providing simple and consistent terminology will assist the Bureau in interpreting and enforcing regulations, and will assist institutions in understanding the Act and the regulations.

Underlying Data: N/A

Subdivision (d):

Problem Addressed: Pursuant to Article 10 of the Act, the Bureau established that an institution's annual gross revenue shall be used to calculate the amount of the institution's annual fee. However, the Act does not define what constitutes "annual gross revenue."

Specific Purpose: To establish a definition for the revenue that is used by the Bureau to calculate an institution's annual fee.

Factual Basis: Defining what constitutes annual gross revenue will aid the Bureau and institutions in accurately determining the amount of annual fees that institutions are required to submit to the Bureau.

Underlying Data: N/A

Subdivision (e):

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| Problem Addressed: | A simple and consistent terminology is needed to describe, as a group, the variety of applications that a person or institution, may file with the Bureau, each of which seeks a different action by the Bureau. |
| Specific Purpose: | To establish a term that can be used for any application submitted to the Bureau, irrespective of the type of application, whereby the institution seeks an action by the Bureau. |
| Factual Basis: | Providing simple and consistent terminology to identify, as a group, all of the applications that may be filed with the Bureau will help the Bureau and institutions communicate more clearly and succinctly, and will help the public understand the regulations. |
| Underlying Data: | N/A |

Subdivision (f):

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| Problem Addressed: | Simple and consistent terminology is needed to describe the group of educational programs that is offered at an institution that has received an approval to operate from the Bureau. |
| Specific Purpose: | To establish a term that can be used to refer to a program that the Bureau has authorized an institution to offer. |
| Factual Basis: | Providing simple and consistent terminology to identify the types of programs that are authorized by the Bureau to be offered by an approved institution will assist the Bureau in communicating with institutions, and will help institutions and students understand the regulations. |
| Underlying Data: | N/A |

Subdivision (g):

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| Problem Addressed: | The Act was rewritten, in part, and reorganized, which resulted in the creation of new articles. |
| Specific Purpose: | To establish a definition and accurate reference for the Maxine Waters School Reform and Student Protection Act of 1989, formerly was contained in Article 2.5 of the old Act. |
| Factual Basis: | This subdivision merely amends former Section 73000(c) to retain the 1997 revision to the structure and numbering of the Act contained in AB 71. |
| Underlying Data: | N/A |

Subdivision (h):

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| Problem Addressed: | Simple and consistent terminology is needed to identify locations from which |
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instruction is provided.

Specific Purpose: To define and establish the criteria that a learning site must meet in order to qualify as a branch site for purposes of the Act.

Factual Basis: Providing clarification of what constitutes a branch will assist institutions and the Bureau in determining the appropriate classification of a learning site, and the calculation of fees, and will assist institutions in complying with applicable provisions that apply to branches.

Underlying Data: N/A

Subdivision (i):

Problem Addressed: A simple and consistent term is needed to describe the state agency with regulatory authority over private postsecondary and vocational institutions.

Specific Purpose: To establish a shortened term for identifying the state agency with authority to administer and enforce the Act.

Factual Basis: Providing a short term for referencing the state agency that has the responsibility to administer and enforce the Act provides clarity in the regulations.

Underlying Data: N/A

Subdivision (j):

Problem Addressed: A consistent term is needed to describe the primary administrator of the Bureau.

Specific Purpose: To define the title of the person designated by the Director of the Department of Consumer Affairs to be the person in control of the Bureau.

Factual Basis: Designating the Bureau Chief as the person in control of the Bureau reflects the Bureau's new structure and assists institutions in understanding who is in control of the Bureau.

Underlying Data: N/A

Subdivision (k):

Problem Addressed: Simple and consistent terminology is needed to communicate the regulatory authority provided by the California Education Code.

Specific Purpose: To retain the current regulation's reference to the Education Code.

Factual Basis: This subdivision merely moves the current definition of "Code" to its proper alphabetical sequence of this section.

Underlying Data: N/A

Subdivision (l):

Problem Addressed: Currently, many of the Bureau's regulations refer to the Bureau's predecessor agency. Amending the definition of Council minimizes confusion to institutions and to students who may not be aware that the Bureau was preceded by the Council for Private Postsecondary and Vocational Education, and therefore, would not know that references in the regulations to "Council" now apply to the Bureau.

Specific Purpose: To clarify that references in the regulations to the Bureau's predecessor, the Council, should now be interpreted to refer to the Bureau.

Factual Basis: The Bureau was created by the Act to assume the authority of regulating, registering, and approving institutions subject to the requirements of the Act. The agency that had the regulatory authority under the old Act was named the Council for Private Postsecondary and Vocational Education and was commonly referred to as "the council". Until all of the Bureau's regulations are revised, some of the regulations continue to refer to the Bureau's predecessor.

Underlying Data: N/A

Subdivision (m):

Problem Addressed: Independent standards employed by each institution for key terminology such as "degree title" creates confusion for students, institutions, and the Bureau.

Specific Purpose: To retain the definition currently in regulations for "degree title".

Factual Basis: This subdivision merely restates the former definition of "degree title" to make it more clear, and moves it from section 71000(j) to this section.

Underlying Data: N/A

Subdivision (n):

Problem Addressed: A simple term is needed to distinguish between a branch or satellite that is currently in operation and holds an approval to operate, and a planned branch or satellite that is not yet operating and does not hold an approval from the Bureau.

Specific Purpose: To establish terms for referring to a branch or satellite site that has been approved by the Bureau.

Factual Basis: For purposes of enforcing the provisions of the Act and the regulations, the Bureau needs to be able to distinguish between branches and satellites that an institution proposes to operate and for which it requests, but has not yet obtained, the Bureau's approval to operate, and the branches and satellites that have obtained the Bureau's approval to operate.

Underlying Data: N/A

Subdivision (o):

Problem Addressed: Simple and consistent terminology is needed to communicate the purpose of the fee that is required to be paid to the Bureau when an institution files an application for approval to operate whereby the Bureau determines whether the institution has met the minimum standards established in the Act and these regulations and qualifies for approval to operate.

Specific Purpose: To establish a term that accurately reflects the activity undertaken by the Bureau, the costs of which the fee is intended to cover.

Factual Basis: A simple and consistent term is needed to identify the fee that an institution submits to the Bureau with the institution's application for an approval to operate, re-approval or amended approval. So that institutions and the public understand what activity by the Bureau the fee is intended to cover, it is important that the term accurately reflect that activity – in this case, for the Bureau's qualitative review and assessment of whether the institution meets the minimum standards established in the Act and the regulations and qualifies for an approval, re-approval, or amended approval to operate. The term also assists the Bureau in differentiating that fee from all of the other types of fees that are required by the Bureau.

Underlying Data: N/A

Subdivision (p):

Problem Addressed: Simple and consistent terminology is needed to communicate the purpose of the fee that is required to be paid to the Bureau when a person or institution files an application relating to registration, exemption, a certificate of authorization for service, an agent's permit or an agency authorization whereby the Bureau determines whether the person or institution meets the requirements established in the Act and qualifies for the certificate or permit for which the person or institution has applied.

Specific Purpose: To establish a term that accurately reflects the activity undertaken by the Bureau, the costs of which the fee is intended to cover.

Factual Basis: A simple and consistent term is needed to identify the fee that an institution submits to the Bureau with the institution's application for a registration, re-registration, amended registration, exemption, certificate of authorization for service, agent permit, or agency permit. So that institutions and the public understand what activity by the Bureau the fee is intended to cover, it is important that the term accurately reflect that activity – in this case, for the Bureau's review and qualification determination of whether the institution meets the minimum standards established in the Act and the regulations and qualifies for a registration, re-registration, amended registration, exemption, certificate of

authorization for service, agent permit, or agency permit. The term also assists the Bureau in differentiating that fee from all of the other types of fees that are required by the Bureau.

Underlying Data: N/A

Subdivision (q):

Problem Addressed: A consistent term is needed to identify language other than the official language of the United States.

Specific Purpose: To establish a definition for languages other than English.

Factual Basis: The Act contains special provisions that relate to solicitations and instruction in a language other than English. Providing a short term for referencing these languages will help make the regulations clear and understandable.

Underlying Data: N/A

Subdivision (r):

Problem Addressed: A consistent term is needed to identify the principle place of business of an institution.

Specific Purpose: To establish a definition for the institution's principle place of business, and location from which the person in control of an institution oversees and administers the institution.

Factual Basis: The Bureau needs to know the location of and have certain information about, an institution's principle place of business from which it operates all of its learning sites. Some institutions, particularly large ones, may have a principle place of business from which they operate all of the learning sites, that is separate and apart from their main site where educational programs are provided. Therefore, the Bureau needs a separate term to identify the institution's principle place of business.

Underlying Data: N/A

Subdivision (s):

Problem Addressed: The Act defines "institution" as including its branch and satellite campuses, unless otherwise provided by the Bureau. Clarification is needed to establish which learning sites the Bureau intends to be included when it refers to an institution.

Specific Purpose: To clarify the definition of "institution" contained in Section 94739 of the Act.

Factual Basis: Since the definition of institution in the Act indicates that the Bureau may specify that "institution" has a different meaning, this regulation clarifies what is

the meaning of that term. It also clarifies that an institution's headquarters is included within the meaning of "institution".

Underlying Data: N/A

Subdivision (t):

Problem Addressed: Institutions traditionally have established proprietary titles for instructional staff who perform specific duties. A simple and consistent term is needed to describe those persons.

Specific Purpose: To clarify the definition of "instructor" formerly contained in subdivision (e) of this section.

Factual Basis: This subdivision, formerly Section 70000(e), essentially moves this definition to its proper alphabetical sequence of this section.

Underlying Data: N/A

Subdivision (u):

Problem Addressed: Simple and consistent terminology is needed to identify the primary locations from which an institution provides instruction.

Specific Purpose: To define and establish the criteria that an institutional site must meet in order to qualify as a main site for purposes of the Act.

Factual Basis: Providing clarification of what criteria a learning site must meet in order to constitute a main site will assist institutions and the Bureau in determining the appropriate classification of a learning site, the calculation of fees, and will assist institutions in complying with applicable provisions that apply to main sites.

Underlying Data: N/A

Subdivision (v):

Problem Addressed: A simple and consistent term is needed to identify an institution that is incorporated and headquartered in a state other than California, and that holds an accreditation from a regional accrediting body recognized by the United States Department of Education.

Specific Purpose: To provide a clear, succinct definition establishing the criteria that an institution must meet in order to qualify as an "out-of-state regionally accredited institution" for purposes of Article 9 of the Act.

Factual Basis: This subdivision sets forth in a clear, concise manner the criteria contained in Section 94905(a) of the Act that an institution must meet in order to qualify to

apply for an approval to operate pursuant to that Section. Thus, it helps the Bureau and institutions understand the requirements of the Act.

Underlying Data: N/A

Subdivision (w):

Problem Addressed: Simple and consistent terminology is needed to communicate the name of the fee assessed by the Bureau when an institution fails to timely pay fees required by the Bureau.

Specific Purpose: To establish a definition of the fee required by the Bureau to be paid by a person or an institution when the institution fails to timely pay another fee that is owed by the person or institution to the Bureau.

Factual Basis: Defining what constitutes a “penalty fee” assists the Bureau and institutions in understanding the consequences when an institution fails to timely submit a required fee.

Underlying Data: N/A

Subdivision (x):

Problem Addressed: A simple term is needed to refer to any portion and type of educational service that an institution may offer.

Specific Purpose: To clarify the definition of "program" as defined in Section 94740 of the Act.

Factual Basis: The Act uses various terms to mean the same thing. It defines “Education”, “Educational services” and “Educational program” to mean the same thing. In its regulations, the Bureau is attempting to select a short term, and to consistently use it throughout the regulations. This definition helps accomplish that goal.

Underlying Data: N/A

Subdivision (y):

Problem Addressed: The Act refers to “Education that is solely avocational or recreational in nature,” but does not define it. Those terms need to be defined so that the Bureau and institutions know what constitutes “recreational education”.

Specific Purpose: To renumber former subdivision (g) to subdivision (y) of this section.

Factual Basis: This subdivision merely moves former Section 71000(g) to its proper alphabetical sequence in this section.

Underlying Data: N/A

Subdivision (z):

Problem Addressed: Simple and consistent terminology is needed to identify an auxiliary location from which instruction is provided.

Specific Purpose: To define and establish the criteria that a learning site must meet in order to qualify as a satellite site for purposes of the Act.

Factual Basis: Providing clarification of what criteria a satellite must meet in order to qualify as a satellite will assist the Bureau and institutions in determining the appropriate classification of a learning site, the calculation of fees, and will assist institutions in complying with applicable provisions that apply to satellites.

Underlying Data: N/A

Subdivision (aa):

Problem Addressed: A single term is needed to refer to an institution's learning sites, irrespective of whether the site is a main site, branch site or satellite site.

Specific Purpose: To establish a term that references all of the educational locations that an institution may have.

Factual Basis: Providing a definition of all of the locations for which the Bureau has issued an approval to an institution will assist the Bureau to more easily communicate with institutions that have multiple learning sites that are approved by the Bureau.

Underlying Data: N/A

Subdivision (bb):

Problem Addressed: A consistent term is needed to refer to the expenses incurred by the Bureau and a site review team when it conducts an on-site qualitative review and assessment.

Specific Purpose: To establish a term for referring to the incidental costs that the Bureau incurs in the site review process.

Factual Basis: The Act requires that the Bureau conduct a site review as part of the Bureau's qualitative review and assessment of an institution and its educational programs, and provides that the institution reimburse the Bureau for expenses incurred as a result of the site review. Providing the types of site review costs for which institutions are required to reimburse the Bureau will enable an institution that is seeking approval, re-approval or amended approval to know what costs the site review team may incur during an on-site qualification review and assessment for which the institution may be liable for reimbursement to the Bureau.

Underlying Data: N/A

Subdivision (cc):

Problem Addressed: A single term is needed to refer to the variety of services that an institution may provide to students.

Specific Purpose: To establish a definition of the types of services related, and in addition to educational services, that an institution may offer to its students.

Factual Basis: The Act and the Bureau's current regulations refer to a variety of ancillary services that an institution may provide to its students. Establishing a single term to refer to those services will help clarify the regulations and will help the Bureau, institutions and students better understand the Act and these regulations.

Underlying Data: N/A

Subdivision (dd):

Problem Addressed: If an institution wishes to make certain types of changes to an educational program, it must obtain approval from the Bureau to make that change(s). The Bureau and institutions need to know what types of changes to an educational program(s) will call for the filing of an application for amended approval to operate.

Specific Purpose: To clarify what constitutes a change in an educational program sufficient to require that an institution file an amended application for approval to operate seeking the Bureau's approval to make the change to the educational program.

Factual Basis: In part, due to the wide variety of educational programs that an institution may offer, it is extremely difficult to state in words when a change to an educational program is so material that it constitutes a major shift in program content, or constitutes a new and different program for which an institution needs to obtain the Bureau's approval to offer. For example, the Bureau believes that it should not be necessary for an institution to obtain the Bureau's prior approval in order to upgrade to the latest version of a software program – that should be an activity that the Bureau encourages. However, if an institution offers an educational program about a particular type of software program and then decides to offer instead, another type of software program (e.g., to move from Word to WordPerfect) – that is a type of change that could significantly affect students who are currently enrolled in the program in order to learn the particular software program originally offered. The different educational program also might require the hiring of different instructors or making other types of changes.

This analysis becomes even more complex when applied to more traditional subjects. Although it would be impossible for the Bureau to quantify in regulation every change to an educational program that an institution might

make that would be sufficiently substantial to require the filing of an application for amended approval, both the Bureau staff and institutions need some general guidance about how to determine when this type of application is necessary. This subdivision attempts to establish that criteria.

Underlying Data: N/A

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94719, 94725, 94727, 94730, 94735, 94739, 94740, 94742, 94852(j), 94901, 94905, 94915, 94920, 94932, 94940, Education Code.

Chapter 2. Degree-Granting Private Postsecondary Educational Institutions

Article 1. General Provisions

§71000(j). Definitions

Problem Addressed: The definitions of terms contained in the current regulations are scattered throughout the regulations. Most of the terms are applicable to all institutions that are subject to the requirements of the Act.

Problem Addressed: To repeal the definitions in this section and move the definitions to Section 70000 - Definitions.

Factual Basis: Placing all of the definitions in one section provides the Bureau and institutions with a more convenient reference of terms, allows for greater consistency between the various provisions in the regulations, and eliminates institutions' possible confusion that could result from having the same terms defined in several different sections of the regulations.

Underlying Data: N/A

§71100(d)(e). Application Form

Problem Addressed: The Act does not specifically provide that the Bureau may charge a fee for an application form, and it is the practice of the boards and bureaus of the Department of Consumer Affairs not to charge a fee for those forms.

Specific Purpose: To repeal those subdivisions in the current regulations which establish a fee for a degree program application for approval form.

Factual Basis: The current regulations provide that the Bureau will charge a fee of \$25 for a degree program application for approval form. However, if the institution completes and files the application, the current regulations provide that the institution will receive a credit of \$25 against the amount of fees that must be paid with the submission of the application. Thus, if an institution completes and files an application with the Bureau, it actually does not pay anything for the application.

However, the Act does not specifically provide that the Bureau may charge a fee for an application form. It is the practice of the boards and bureaus of the Department of Consumer Affairs not to charge a fee for their application forms. Moreover, when the Bureau attempted to adopt a similar regulation with respect to its Application for Registration, the Office of Administrative Law (“OAL”) rejected the regulation. OAL opined that although the Bureau might be able to charge a fee for its application, the basis for doing so would be the Public Records Act, and the fee that could be charged would have to be limited to the amount that a state agency may charge for providing copies of public records provided pursuant to a Public Records Act request. OAL also opined that crediting the amount paid for the application to an institution who completes and files an application discriminates against those institutions and persons who decide not to file an application, since only those persons would actually pay a fee for the document.

For all of those reasons, the Bureau has decided that it will no longer charge a fee for an application. Therefore, these subdivisions need to be repealed.

Underlying Data: N/A

§71655.

Satellite Locations

Problem Addressed: One of the elements of a satellite site contained in the current regulations is not consistent with the new Act.

Specific Purpose: To repeal the definition of a satellite and replace it with the definition established in Section 70000(z) of these regulations.

Factual Basis: The old Act specifically provided that a satellite site could not be located more than 50 miles away from an institution’s main site or branch site. (See old Education Code section 94302(x).) AB 71 (Wright) rewrote and renumbered the Act. Although many of the provisions in the old Act were retained in AB 71, many new provisions were added, and some provisions were deleted. The 50-mile limitation on the location of a satellite was specifically deleted from the Act in AB 71. Therefore, the Bureau is rewriting the definition of a “satellite” to eliminate the 50-mile limitation, and to make other clarifying changes. The new definition is contained in proposed regulation Section 70000(z).

Underlying Data: N/A

§72000(b)(k).

Definitions

Problem Addressed: The definitions of terms contained in the current regulations are scattered throughout the regulations. Most of the terms are applicable to all institutions that are subject to the requirements of the Act.

Specific Purpose: To repeal the definitions in this section and move the definitions to Section 70000 - Definitions.

Factual Basis: Placing all of the definitions in one section provides the Bureau and institutions with a more convenient reference of terms, allows for greater consistency between the various provisions in the regulations, and eliminates institutions' possible confusion that could result from having the same terms defined in several different sections of the regulations.

Underlying Data: N/A

Title 5. Education
Division 7.5. Private Postsecondary Education
Chapter 5. Provisions Applicable to All Approved Postsecondary Institutions
Article 1. Fees and Payment Schedule

§73000(c). Definitions

Problem Addressed: The definitions of terms contained in the current regulations are scattered throughout the regulations. Most of the terms are applicable to all institutions that are subject to the requirements of the Act.

Specific Purpose: To repeal the definition in this section and move the definition to Section 70000 - Definitions.

Factual Basis: Placing all of the definitions in one section provides the Bureau and institutions with a more convenient reference of terms, allows for greater consistency between the various provisions in the regulations, and eliminates institutions' possible confusion that could result from having the same terms defined in several different sections of the regulations.

Underlying Data: N/A

§73100(b)(c). Application Form

Problem Addressed: The Act does not specifically provide that the Bureau may charge a fee for an application form, and it is the practice of the boards and bureaus of the Department of Consumer Affairs not to charge a fee for those forms.

Specific Purpose: To repeal those subdivisions in the current regulations which establish a fee for a non-degree application for approval form.

Factual Basis: The current regulations provide that the Bureau will charge a fee of \$25 for a non-degree application for approval form. However, if the institution completes and files the application, the current regulations provide that the institution will receive a credit of \$25 against the amount of fees that must be paid with the submission of the application. Thus, if an institution completes and files an application with the Bureau, it actually does not pay anything for the application.

However, the Act does not specifically provide that the Bureau may charge a fee for an application form. It is the practice of the boards and bureaus of the Department of Consumer Affairs not to charge a fee for their application forms. Moreover, when the Bureau attempted to adopt a similar regulation with respect to its Application for Registration, the Office of Administrative Law (“OAL”) rejected the regulation. OAL opined that although the Bureau might be able to charge a fee for its application, the basis for doing so would be the Public Records Act, and the fee that could be charged would have to be limited to the amount that a state agency may charge for providing copies of public records provided pursuant to a Public Records Act request. OAL also opined that crediting the amount paid for the application to an institution who completes and files an application discriminates against those institutions and persons who decide not to file an application, since only those persons would actually pay a fee for the document.

For all of those reasons, the Bureau has decided that it will no longer charge a fee for an application. Therefore, these subdivisions need to be repealed.

Underlying Data: N/A

§74000(d)(e)(f)(g). Fees and Penalties

Problem Addressed: All of the sections contained in the regulations proposed by the Bureau relate to different provisions. Section 74000 of the current regulations covers two different subjects - general provisions relating to fees and penalty provisions.

Specific Purpose: To repeal the subdivisions relating to penalties and move them to Section 74003 of the proposed regulations.

Factual Basis: Separating regulations dealing with different subjects into separate sections enables institutions, students, and Bureau staff to more easily locate and understand regulations.

Underlying Data: N/A

§74000. General Provisions Regarding Fees

Subdivision (a):

Problem Addressed: The current regulation is not as clear as it might be.

Specific purpose: To clarify that the fees that are required to be paid by an institution to the Bureau are those fees that are promulgated by the Bureau pursuant to the Act and these regulations.

Factual Basis: When the Act was promulgated in 1989, it included fees established by the Legislature that remained in effect until such time as the Council adopted regulations and established a fee schedule. Once the Council did that, those fee provisions in the Act were repealed. Today, although the Act does not contain specific fee amounts, it does contain provisions that govern generally the

purposes and amounts of some fees, and the basis on which they are to be calculated. Current regulation Section 74000(a) indicates that the amount of a fee may be contained in the Act. That is no longer accurate. Therefore, these clarifying amendments are necessary to more accurately state the source of the fee schedule which institutions must use to calculate the fees they owe to the Bureau.

Underlying Data: N/A

Subdivision (b):

Problem Addressed: Former paragraphs (1), (2) and (3) are not as clear as they might be, and also contain references to the now nonexistent Council. They also fail to address fees to be filed with applications for Bureau action other than an approval to operate. They also do not address the Bureau's ability to process an application that does not include the appropriate fees.

Specific Purpose:

- (1) To clarify when and to whom annual fees must be paid by an institution and submitted to the Bureau.
- (2) To use the newly defined term to which this paragraph applies, and to specify the types of applications to which it applies.
- (3) To establish and clarify that when a person or institution files with the Bureau an application for a certificate of authorization for service, agent's permit or agency authorization, it must be accompanied by the appropriate fee.
- (4) To establish and clarify that when a person or institution files with the Bureau an application for an exemption, it must be accompanied by the appropriate fee.
- (5) To convert old references to the Council, and to clarify that the paragraph applies to any type of application seeking Bureau action.
- (6) To establish the policy the Bureau will follow for calculating the time within which the Bureau will act on an application when an applicant fails to include all or part of an applicable fee with its application seeking Bureau action.

Factual Basis:

- (1) Institutions that are subject to registration must submit an annual report and pay an annual fee. (See Educational Code Section 94931(e).) Institutions that obtain an exemption from the Bureau must also annually file certain information and pay annual fees. (See, e.g., Education Code Section 94739(b)(6) and CCR Section 74006(e).) Therefore, this regulation also applies to institutions that may not hold an approval to operate. These changes are necessary in order to clarify that the provisions apply to these institutions.

(2) The Bureau is amending this paragraph simply to make appropriate changes to terminology that will make the paragraph more clear and accurate.

(3) This subdivision, as it has existed until now, could be read to apply only to fees that must be paid by an institution that is subject to approval. In fact, any application seeking an action by the Bureau must be accompanied by a separate fee. That requirement has been practiced and enforced for years. While the requirement may seem self-evident, since the regulations specifically address the subject with respect to applications relating to an approval, they also should address the subject with respect to applications for other types of Bureau actions. This paragraph makes clear that a separate fee must accompany the filing of an application that requires that the Bureau conduct a review of the application and make a determination of whether the institution or person qualifies for the status it is seeking.

Additionally, one of the changes to the Act made by AB 71, adopted in 1997, was the addition of a registration program. An institution subject to registration must file an application for registration, not an application for approval to operate. Because the registration program did not exist when the current regulations were promulgated, the current regulations do not address the fees to be paid with a registration. This paragraph also makes clear that the applicable fee must be paid with the submission of an application relating to registration.

(4) The Act provides for several exemptions from the requirements contained in the Act. This paragraph makes clear that an application for an exemption also must be accompanied by the appropriate fee.

(5) The proposed amendments to this paragraph merely update references to the former Council to the Bureau and, as discussed above, clarify that the paragraph applies to all types of applications seeking Bureau action.

(6) In accordance with the Legislature's intent that the Bureau fund its operations through fees assessed on institutions, the Bureau must assure that institutions pay the fees that the Bureau is authorized by regulation to charge. State agencies that issue licenses typically collect the fees for the license at the time that the applicant files an application for licensure. At least in part, that is because it often could be very difficult and costly for the state agency to collect the fees either after the applicant obtained the license for which he or she had applied, or after the state agency denied the application for licensure. Thus, to the extent possible, the Bureau should assure that an institution has submitted the appropriate fees to cover the Bureau's cost to conduct the qualitative review and assessment or the review and qualification determination before the Bureau begins conducting the required activity.

In order to help assure that an institution timely pays its fees for a qualitative review and assessment or a review and qualification determination, this

paragraph specifically provides that the Bureau has the authority to refuse to act on an application seeking Bureau action until the institution or person has paid all applicable fees. It also provides that the time within which the Bureau must act on an application seeking Bureau action, as established in other sections of the regulations, is tolled until the institution or person pays all applicable fees. Thus, the failure of an institution or person to pay the applicable fees does not reduce the time within which the Bureau has to process the application and issue its determination.

These provisions are consistent with the Bureau's past practice. However, establishing them in regulation helps persons and institutions understand the process that will be applied, and the potential consequences of a failure to timely pay all fees that are due with the submission of an application for Bureau action.

Underlying Data: N/A

Subdivision (c):

Problem Addressed: This subdivision is not as clear as it might be regarding its application to all types of fees submitted to the Bureau.

Specific purpose: To clarify the types of fees submitted to the Bureau that are non-refundable.

Factual Basis: Institutions' knowledge of the types of fees that are non-refundable will help to alleviate misunderstandings. Because of the context of other subdivisions in this section, the language of the current subdivision could be interpreted to apply to fees that accompany only an application for approval. As discussed above, that interpretation would be incorrect.

Except as required by the second paragraph of Business and Professions Code section 158, as a general rule, any fees submitted with any type of application seeking action by a board or bureau of the Department of Consumer Affairs are not refundable. Moreover, Government Code section 13142 prohibits the refund of any fee in specified circumstances.¹⁴ The refund of fees such as penalty fees, assessments of costs, and other types of assessments such as the Student Tuition Recovery Fund ("STRF") assessment, etc., also may be governed by those provisions. Annual fees, which must be submitted with an annual report that must be processed by the Bureau, would appear to fall within the category of fees in Government Code section 13142 that are non-refundable. It was the past practice of the Council that annual fees generally were non-refundable.

This subdivision needs to be clarified to reflect that all such fees, and not just fees submitted with an application for approval to operate, are non-refundable.

¹⁴ Government Code section 13143 and the first paragraph of Business and Professions Code Section 158 set forth circumstances where refunds may be made at the discretion of the state agency.

Additionally, in the past, the Council charged a fee for application documents. The Bureau is electing not to impose that charge. Therefore, this subdivision is being amended to delete the reference to a document charge.

Underlying Data: N/A

Subdivision (d):

Problem Addressed: Returned checks result in costs accruing to the Bureau for handling, notification and securing subsequent payment, as well as for fees assessed to the Bureau by financial institutions due to return checks.

Specific Purpose: To establish the Bureau's authority to recover costs associated with returned checks. The Bureau must protect the integrity of the State's resources and strive to efficiently manage its fiscal responsibilities.

Factual Basis: Establishing the Bureau's authority to recover costs from return checks will enable the Bureau to protect the integrity of the State's resources and to efficiently manage its fiscal responsibilities.

Underlying Data: N/A

Subdivision (e):

Problem Addressed: Delinquency penalties for late payment must be determined based upon a triggering event to cover the costs of the activity to be undertaken by the Bureau.

Specific Purpose: To establish the date the Bureau will use to determine whether payments made by institutions for fees described in Chapter 5 are delinquent and subject to penalties. The Bureau must protect the integrity of the State's resources and strive to efficiently manage its fiscal responsibilities.

Factual Basis: Establishing the method for determining the date on which fees are paid will enable the Bureau to consistently and effectively enforce the provisions relating to timely payment of fees, and will help eliminate disputes regarding the date on which the fees are paid.

Underlying Data: N/A

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c)(1), 94920, 94940, 94846(a), Education Code.

§74002. Definitions and References

Problem Addressed: The definitions of terms contained in the current regulations are scattered throughout the regulations. Most of the terms are applicable to all institutions that are subject to the requirements of the Act.

Specific Purpose: To repeal the definitions in this section and move the definitions to Section 70000 - Definitions.

Factual Basis: Placing all of the definitions in one section provides the Bureau and institutions with a more convenient reference of terms, allows for greater consistency between the various provisions in the regulations, and eliminates institutions' possible confusion that could result from having the same terms defined in several different sections of the regulations.

Underlying Data: N/A

§74002. Disputes Involving Fees

Problem Addressed: The current regulations do not specify a procedure through which an institution may dispute the Bureau's assessment of a fee.

Specific Purpose: To establish timeframes, documentation requirements, and a process for disputing fee determinations with the Bureau.

Factual Basis: In addition to the possibility of human error, the Bureau realizes that, particularly because the database inherited by the Bureau is old and not always up-to-date, there may exist the possibility that fees assessed by the Bureau on an institution may not, in every instance, be correct. The current regulations do not specifically set forth a process by which an institution that believes that the Bureau incorrectly assessed a fee against the institution, or incorrectly calculated the amount due, may object to the fee. This section establishes such a process. Such a process will assure institutions that they have a means to file an objection to a fee assessment, and will establish a non-discriminatory process for addressing the objection.

Underlying Data: N/A

Note: Authority cited: Sections 94774 (a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94901, 94915, 94920, 94932(c), 94940(a)(3), Education Code.

§74003. Consequences and Penalties for Delinquency in Payment of Fees

Problem Addressed: The consequences and penalties for delinquent payment of fees currently are contained in Section 74000 - Fees and Penalties. They are difficult to locate and reference. In addition, the existing regulations need some clarification to reflect consistency in terminology with the Act, to reflect the Bureau as the regulatory agency, and to clearly reflect that the provisions apply to all types of fees that may be due to the Bureau.

Specific Purpose: To separately identify the consequences and penalties for delinquent payment of fees, and to clarify terminology as reflected in the Act, and to make its application consistent for all types of fees.

Factual Basis: Separating the provisions governing the consequences and penalties for delinquent payment of fees into a separate section will assist institutions and the Bureau in easily locating those provisions. Obviously, the regulations need to be updated to provide consistency in terminology. Clarifying that these provisions apply to all types of fees may be due to the Bureau will assist institutions in better understanding and complying with the Act.

Underlying Data: N/A

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c)(1), 94934, 94920, 94940, 94846(a), Education Code.

§74004. Fee Schedule.

Problem Addressed: Some of the terminology contained in the current regulations no longer reflects the present regulatory structure. Most of the changes to this section merely change "Council" to "Bureau", to reflect the current regulatory structure.

Specific Purpose: To implement consistent terminology for referencing these regulations and the Bureau.

Factual Basis: The Council could increase its fees, up to the maximum allowed, if the increase was established by a majority vote of the Council. Since the Council no longer exists, fees cannot be established by resolution. Consistency in terminology will prevent confusion and improve communications and resolve questions related to the Act and the Bureau's authority.

Underlying Data: N/A

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94774(d), 94932, Education Code.

§74006. Annual Fee

Subdivision (a):

Problem Addressed: This subdivision is not as clear as it might be. Moreover, an institution that offers both degree or non-degree programs and registered programs may be subject to more than one annual fee.

Specific Purpose: To clarify that an institution must pay all of the annual fees that apply to it.

Factual Basis: Section 94830(g) of the Act provides that the Bureau may refuse to issue or renew an institutions' approval to operate, or may revoke the institution's approval to operate, if the institution fails to pay any fees required by the Act to be paid by the institution. Some institutions may fail to pay all of their annual fees when due. Additionally, an institution that offers both a degree or non-degree and a registered program(s) may be subject to separate annual fees.

Institutions need to know that they are required to pay all of the annual fees that apply to the institution.

Underlying Data: N/A

Subdivision (b):

Problem Addressed: This subdivision is not as clear as it might be.

Specific Purpose: To clarify the subdivision, including making it explicit that the payment of the other fees does not satisfy the institution's obligation to pay its annual fee.

Factual Basis: The Act requires that institutions submit all fees in a timely manner, and provides that the Bureau may deny an institution's application, or may revoke an institution's approval, for failure to submit fees in a timely manner. Institutions are required by the Act and this Division to submit various fees to the Bureau, including fees for the qualitative review and assessment for re-approval and for amended approval. Because some of the information that an institution is required to submit in its annual report is the same as some of the information required to be included in an application for re-approval or amended approval, the institution may incorrectly assume that it is not required to submit an annual report and annual fees, since it may have already recently submitted that information to the Bureau for review in an application for re-approval or amended approval. Therefore, institutions need to be made aware that the annual fee is in addition to any other fees that are required to be paid.

Underlying Data: N/A

Subdivision (c):

Problem Addressed: Subdivision(c)(1) of Section 94932 of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act, including the maximum amount to be charged for an institution's annual fee. The Bureau has determined that in order to distribute annual fees more equitably based on the size of the institution, as required by the Act, the Bureau needs to change the minimum and maximum annual fees, and the calculation of the annual fees, need to be adjusted.¹⁵

Specific Purpose: To redistribute the annual fees to be paid by institutions by establishing different minimum and maximum dollar amounts that an institution may be required to pay.

¹⁵ The Bureau's proposed fee schedule is attached as Appendix A to this Initial Statement of Reasons ("ISR") for purposes of review and disclosure, but is not being included as part of the regulations. The fee amounts contained in that fee schedule for a qualitative review and assessment are supported by the workload data attached to the Economic Impact Statement ("EIS") as Appendices A through E. In each instance, the amount of the maximum fee contained in these proposed regulations for a qualitative review and assessment were derived by applying to the amount in the fee schedule the Consumer Price Index ("CPI") annually for a two-year period. Since the Bureau retained in these proposed regulations the current regulation's maximum relating to the percentage of an institution's annual gross revenues that the institution must pay as an annual fee, the Bureau did not include a CPI factor in these regulations relating to annual fees.

Factual Basis: Institutions need to know the maximum fees that they are required to pay annually so that they are aware of all of the costs involved in operating an institution.

Section 94932(c)(3) of the Act provides that, “It is the intent of the Legislature that the council [Bureau] shall adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a larger annual fee than those with smaller student enrollments. In addition, Section 94932(c)(2) of the Act required that on January 1, 1998, the Bureau reduce its fees relating to an application for approval and re-approval, and its annual fees, by a graduated percentage based on the gross revenues of the institution, giving institutions with the largest gross revenues a 5% reduction, and institutions with the smallest gross revenues a 15% reduction in fees. As discussed above, the Legislature did not specify a time period in which those fee changes must remain in effect. To the contrary, the Legislature established a mechanism whereby the Bureau may change those fees.

As discussed more thoroughly in the Preface of this Initial Statement of Reasons (ISR), the Act reflects the Legislature’s overarching intent that the Bureau charge sufficient fees to cover all of the costs of its operations, except for those covered by federal funding for the veterans’ program. Additionally, the Legislature has indicated an intent that the Bureau’s fees relating to the qualitative review and assessment of an institution generally bear some reasonable relationship to the Bureau’s costs to conduct the qualitative review and assessment. That means that all of the Bureau’s remaining operational costs, including most of its enforcement costs, must be covered by fees other than application fees – in other words, by the annual fee. Section 94932(b) of the Act requires that the Bureau use a minimum of 50% of its funds to cover the costs of enforcement. As indicated above and in the Preface, the Legislature also has indicated an intent that fees assessed on an institution, and in particular amended fees, bear some reasonable relationship to the size of the institution.

Since assuming responsibility for implementing and enforcing the Act, the Bureau has attempted to analyze its workload, and to assess whether its fee structure needs to be adjusted to more closely reflect the Legislature’s intent regarding fees, as discussed above in the Preface of this ISR.

The Bureau’s analysis of its annual fee structure has led it to the conclusion that the annual fee structure needs to be adjusted to more closely reflect the Legislature’s intent regarding fees, the Bureau has concluded that some adjustments to the annual fees are called for.

Based on the most recent data available to the Bureau, the Bureau has calculated that 33% of the institutions subject to the Bureau’s jurisdiction have an annual gross revenue of less than \$100,000, while 16% of the institutions have an

annual gross revenue of \$1,000,000 or greater, and 51% have an annual gross revenue of \$100,000 through \$999,999. Under the current annual fee structure contained in the current regulations, the minimum annual fee that an institution may pay is \$700, and the maximum annual fee is \$8,000. However, the current maximum annual fee that may be assessed pursuant to the Bureau's fee schedule, as adjusted from the Council's fee schedule effective January 1, 1998, in accordance with Section 94932(c)(2) of the Act, is \$4,750. The result is that once an institution reaches an annual gross revenue in excess of \$1 million, the amount of its annual fee remains the same irrespective of the amount of the institution's annual gross revenue. The result is that institutions with an annual gross revenue of \$956,000 or less pay a disproportionately larger portion of the Bureau's costs to administer and enforce the Act than do institutions whose annual gross revenue exceeds \$1 million.

In order to make annual fees more equitable, the Bureau proposes to reduce the minimum amount of an annual fee from \$700 to \$500, and to increase the maximum possible annual fee from \$8000 to \$20,000. For purposes of the fee schedule, which reflects the fees the Bureau intends to charge the Bureau also proposes to reduce to one-half of one percent (.005 or .5%) the percentage of annual gross revenue that constitutes the Bureau's annual fee. (However, in order to maintain some leeway for any future change in annual fees that might be necessitated by other factors, such as inflation, the Bureau is maintaining in its regulation the current maximum for an annual fee of 1% of an institution's annual gross revenues.) The results of those changes will be that approximately 84% of the institutions subject to the Bureau's jurisdiction will see a reduction in the amount of their annual fee. In contrast, only 16% of the institutions subject to the Bureau's jurisdiction – those institutions with the highest annual gross revenues – will see an increase in the amount of their annual fee. Thus, the funding of the Bureau's costs to administer and enforce the Act will be more equitably apportioned among the institutions subject to the Bureau's jurisdiction. The Bureau submits that its proposal more closely reflects the Legislature's intent, as set forth above, with respect to allocating the fee burden among institutions based on the institution's size.

Underlying Data: The Bureau has reviewed existing annual fees as they are currently distributed among small, medium and large institutions and is proposing that these fees be redistributed to be more equitable to small and medium institutions. The Bureau proposes in its fee schedule to apply a standard .005 or .5% across the board to an institution's annual gross revenues as the alternative maximum annual fee for all schools, but to reduce the floor to further decrease the annual fee for the smaller institutions and to redistribute the annual fee increase to the largest institutions by increasing the ceiling. See Appendix E to the Economic and Fiscal Impact Statement (EFIS) (Std.399).

Subdivision (d):

Problem Addressed: A "short-course institution" no longer exists in the new Act. Former subdivision (c) of this section (which will become subdivision (d)), is not as clear as it might be.

Specific Purpose: To establish an annual fee associated with the review and substantiation of information and documentation submitted to support claims of exemption.

Factual Basis: Subdivision (d) of the current regulations governs annual fees applicable to a "short-course institution." One of the revisions of the Act made by AB 71 was to establish a new category of educational programs – registered programs. Institutions that qualified as a "short-course institution" under the old Act are in a group of educational programs that are subject to registration under the new Act. Thus, a "short-course institution" no longer exists, and this subdivision needs to be repealed.

The repeal of old subdivision (d) causes subdivision (e) to become the new subdivision (d). The section of the Act referenced in old subdivision (e) has a different number in the new Act. Additionally, the section is not worded as clearly as it might be. The Bureau is rewording this subdivision to correct the reference to the Act, and to more clearly state the purpose of the annual fee for an institution that has applied for, and has been granted, an exemption from the Act.

Underlying Data: N/A

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94808, 94861, Education Code.

§74008. Fees Payable by Institutions In Connection With Approval Under Section 94310 of the Code

Problem Addressed: The current regulation structure for fees relating to the various types of applications that an institution may file are increasingly out-dated and inappropriate. Additionally, many of the fee structures do not comply with the Legislature's intent that application fees generally reflect the cost incurred by the Bureau to conduct the qualitative review and assessment required for the particular application.

Specific Purpose: To repeal and replace with Chapter 5 Sections 74010 through 74010.48

Factual Basis: The current regulations address fees relating to a variety of applications based on the category of an institution – either degree or non-degree. Since more and more institutions are a hybrid – the institution offers both degree and non-degree programs – those categorical distinctions are increasingly out-dated and inappropriate.

Additionally, the fee structure in the current regulations does not reflect the Legislature's intent that application fees generally reflect the cost incurred by the Bureau to conduct the qualitative review and assessment required for the particular application. For example, current Section 74008 establishes a flat fee for an application for approval to operate containing five or less degree programs. However, as reflected in Appendix B of the EFIS and discussed in more detail below, the Bureau incurs a cost for each degree program that is contained in an application. Therefore, a fee structure that imposes a fee for each degree program included in an application for approval to operate is more equitable.

For those reasons, rather than attempt to amend current Section 74008(a), the Bureau has elected to repeal Section 74008 and adopt new sections 74010 through 74010.48.

Underlying Data: N/A

§74008.

Reimbursement of Site Review or Site Inspection Expenses

Subdivision (a):

Problem Addressed: Current regulations do not explicitly establish the billing and collection procedures associated with site reviews and site inspection expenses. Additionally, Section 15376 of the Government Code requires agencies to establish the time-frames for permit processing.

Specific Purpose: To: (1) clarify the requirements for reimbursement of site review and site inspection expenses; (2) provide mechanisms for invoicing and collections of those expenses; and (3) establish the consequences for non-payment of invoices for site review expenses.

Factual Basis: Sections 94901(i) and 94915(c) of the Act, for degree and non-degree programs, respectively, provide that the institution that is the subject of an on-site qualitative review and assessment is responsible for the "expenses" of the site review team, including the expenses of the Bureau's staff who participate on the on-site review team. Proposed subdivision (a) specifically identifies the costs that are included as "expenses" for purpose of those sections of the Act, and the maximum rates for those expenses. "Expenses" are those expenses that would be reimbursable by the state for work travel assignments by employees of the state. This subdivision also provides that the maximum rate for those expenses will not exceed the maximums established by the state for reimbursing state employees on work travel assignments. This subdivision merely explicitly establishes what was the practice under the Council, and what has been the practice by the Bureau.

Underlying Data: N/A

Subdivision (b):

Problem Addressed: Current regulations do not explicitly establish the billing and collection procedures associated with site reviews and site inspection expenses. Additionally, Section 15376 of the Government Code requires agencies to establish the time-frames for permit processing.

Specific Purpose: To: (1) clarify the requirements for reimbursement of site review and site inspection expenses; (2) provide mechanisms for invoicing and collections of those expenses; and (3) establish the consequences for non-payment of invoices for site review expenses.

Factual Basis: This subdivision establishes the process to be followed for billing an institution for any expenses of the site review team. Briefly, within 15 days of the date of completion of the on-site review and assessment the Bureau will issue an invoice reflecting the actual expenses incurred by the site review team. The institution is given 30 days after the date of issuance of the invoice within which to pay the expenses.

Underlying Data: N/A

Subdivision (c):

Problem Addressed: Current regulations do not explicitly establish the billing and collection procedures associated with site reviews and site inspection expenses. Additionally, Section 15376 of the Government Code requires agencies to establish the time-frames for permit processing.

Specific Purpose: To: (1) clarify the requirements for reimbursement of site review and site inspection expenses; (2) provide mechanisms for invoicing and collections of those expenses; and (3) establish the consequences for non-payment of invoices for site review expenses.

Factual Basis: This subdivision confirms the Bureau's authority to issue a notice of intent to deny an institution's application for approval to operate for non-payment of fees, pursuant to Section 94830(q) of the Act, if the institution fails to timely pay the site review team expenses invoiced pursuant to subdivision (b) of this section. Again, this procedure conforms to the Bureau's procedure for a denial of an application for approval to operate on other grounds, with the exception of the issuance of a notice of intent to deny unless the institution submits the expenses of the site review team within 15 days.

Underlying Data: N/A

Subdivision (d):

Problem Addressed: Current regulations do not explicitly establish the billing and collection procedures associated with site reviews and site inspection expenses. Additionally, Section 15376 of the Government Code requires agencies to establish the time-frames for permit processing.

Specific Purpose: To: (1) clarify the requirements for reimbursement of site review and site inspection expenses; (2) provide mechanisms for invoicing and collections of those expenses; and (3) establish the consequences for non-payment of invoices for site review expenses.

Factual Basis: This subdivision establishes the remaining procedures to be followed by the Bureau where an institution fails to timely pay the invoice of the expenses of the site review team. Specifically, if the institution fails to pay the invoice within 15 days of the date of the notice of intent to deny the application, the Bureau may issue a notice of denial, which becomes effective 30 days from the date of that notice, just as it does when the Bureau denies an application for approval to operate on any other basis. The notice also informs the institution of its right to request a hearing, and specifies the hearing processes that may be used. If the institution fails to request a hearing within the specified time period, the denial becomes effective 30 days after the date of the notice of denial. Just the same as when an institution's application for approval is denied on any other ground, on the effective date of the denial, the institution must cease its operations, and may not again begin to offer educational services until it has first submitted a new application for approval to operate, and until the Bureau has determined that the institution qualifies for an approval to operate and has issued an approval to the institution. All of these provisions are consistent with the Bureau's operations and administration with respect to the denial of an approval to operate on grounds other than non-payment of fees.

Underlying Data: N/A

NOTE: Authority cited: Sections 94772, 94774(a)-(d) and (g), 94774.5, 94778(a), 94932(c) Education Code. Reference cited: Sections 94901(a), 94905, 94915(c), Education Code.

§74010. Fees Payable by Institutions In Connection With Approval Under Section 94311 of the Code

Problem Addressed: The current regulation structure for fees relating to the various kinds of applications that an institution may file are increasingly out-dated and inappropriate. Additionally, many of the fee structures do not comply with the Legislature's intent that application fees generally reflect the cost incurred by the Bureau to conduct the qualitative review and assessment required for the particular application.

Specific Purpose: To repeal and replace with Chapter 5 Section 74010 through 74010.48.

Factual Basis: The current regulations address fees relating to a variety of applications based on the category of an institution – either degree or non-degree. Since more and more institutions are a hybrid – the institution offers both degree and non-degree programs – those categorical distinctions are increasingly out-dated and inappropriate.

Additionally, the fee structure in the current regulations does not reflect the Legislature's intent that application fees generally reflect the cost incurred by the Bureau to conduct the qualitative review and assessment required for the particular application. For example, current Section 74010(a) establishes a flat fee for an application for approval to operate containing five or less non-degree programs. However, as reflected in Appendix C of the EFIS and discussed in more detail below, the Bureau incurs a cost for each educational program that is contained in an application. Therefore, a fee structure that imposes a fee for each educational program included in an application for approval to operate is more equitable.

For those reasons, rather than attempt to amend current Section 74010, the Bureau has elected to repeal Section 74010 and adopt new sections 74010 through 74010.48.

Underlying Data: N/A

§74010. Fees For a Qualitative Review and Assessment of an Initial Application for Approval to Operate

Subdivisions (a):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessment for a qualitative review and assessment for an initial application for approval to operate reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish a fee structure that accurately complies with the Legislature's intent and reflects the cost to the Bureau to conduct a qualitative review and assessment of the institution and its educational programs.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act, including the maximum amount to be charged by the Bureau to perform a qualitative review and assessment of an institution seeking approval of its educational programs. Additionally, as discussed in the Preface of this ISR, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions. Additionally, Section 94901(a) with respect to degree programs, and Section 94915(b)(13) with respect to non-degree programs, specifically provides that the fee for a qualitative review and assessment shall be based, at least in part, on the number of learning sites, and the number of educational programs, included in the application for approval to operate.

Since the level of review for a degree program is more extensive than for a non-degree program, it also is reasonable that the fee should be based on the type of educational programs included in an application – whether degree or non-degree

programs. That is consistent with the Council's past practice in assessing fees, and with the current regulations.

This subdivision merely clarifies and confirms that the amount of the fee for a qualitative review and assessment that is to be paid by an institution with its submission of an initial application for approval to operate will comply with the requirements of Section 94901(a) and 94915(b)(13) of the Act, and with the Council's past practice that the fee also be based on the type of educational programs included in the application.

Underlying Data: The Bureau prepared a workload data worksheet (enclosed), which includes a detailed analysis of the amount of time required to complete the various tasks associated with a qualitative review and assessment of an institution and its educational programs. The cost for each major qualitative review and assessment function is calculated together as a total cost to process an application for approval, and is used as a basis for the fees.

Subdivision (b):

Problem Addressed: The Bureau's current fee schedule does not accurately conform to the Legislature's intent that the fee assessment for a qualitative review and assessment for an initial application for approval to operate reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish the maximum amount an institution that offers only degree program(s), or both degree programs and non-degree programs, is required to pay for the Bureau to conduct a qualitative review and assessment of the institution and its educational programs included in an initial application for approval to operate.

Factual Basis: As discussed above with respect to the annual fees, since assuming responsibility for implementing and enforcing the Act, the Bureau has attempted to analyze its workload, and to assess whether its fee structure needs to be adjusted to more closely reflect the Legislature's intent regarding fees as discussed above in the Preface of this ISR. In analyzing its fee structure and making its recommendations for changes thereto, the Bureau has attempted to focus on assuring that its fee structure is fair and equitable by imposing the Bureau's costs, to the extent possible, on the cost-causer. Documentation reflecting the Bureau's analysis of its workload relating to an initial application for approval to operate that includes one or more degree programs is contained in page 1 of Appendix B of the EFIS. That documentation supports the need for a variety of changes in the manner in which fees are assessed.

For example, the current regulations establish a flat fee for an application that contains up to five educational programs. However, there is a cost to the Bureau to conduct the required qualitative review and assessment with respect to each educational program offered by an institution. The result of the current

regulations is that an institution that offers one or two educational programs may be required to pay a fee that exceeds the Bureau's cost to conduct the qualitative review and assessment, while an institution that offers four or five educational programs may be required to pay a fee that is less than the Bureau's cost to conduct the qualitative review and assessment. The Bureau is not aware of any reason why this inequity should be continued when it is simple to remedy it by assessing a standard fee for each educational program that is included in an initial application for an approval to operate. This subdivision does that.

In analyzing the tasks that must be performed in conducting a qualitative review and assessment, the Bureau determined that certain functions must be conducted for every main site included in an initial application for approval of degree programs. The Bureau determined its costs to perform those functions, and has set that amount as its basic fee for every main site included in an initial application for approval of degree programs. That fee is reflected in the Bureau's proposed fee schedule, attached as Appendix A to this ISR.

In order to allow for a potential need to increase fees over time due to inflation, the maximum basic fee for a main site contained in this subdivision was calculated by using the fee reflected in the Bureau's fee schedule for an initial application for approval of degree programs at a main site, and applying to that figure the current Consumer Price Index ("CPI") on an annual basis for a two-year period.

The fee schedule established by the Council imposed a separate fee for each branch and satellite site included in the initial application of an institution that offered only non-degree programs. However, the Council did not impose a separate fee for each branch and satellite site included in the initial application of an institution that offered degree programs. The result of the application of that distinction is that institutions that offer degree programs at several sites included in one application for approval to operate generate more costs for the Bureau to conduct the required qualitative review and assessment, but those costs are spread across all institutions, including those that may have only one site.

Section 94900(a) requires that the Bureau conduct a qualitative review and assessment of all of the educational programs offered by an institution, and all of the operational sites of an institution. Section 94901(b) requires that the Bureau conduct an on-site review and assessment of each main site and each branch site included in an initial or re-approval application for approval to operate.¹⁶ Thus, although Section 94719 of the Act provides that a branch may not offer an educational program that is not approved to be offered at the main site, there still

¹⁶ If a satellite also is included in an initial or re-approval application, the Bureau may, but is not required to, conduct an on-site qualitative review and assessment of the satellite site. (See Education Code section 94901(b)(1).) However, where an application is for the approval of a branch or satellite (i.e., an application to add a branch or satellite) the Bureau must conduct an on-site qualitative review and assessment of the branch or satellite, and also may inspect the main site. (See Education Code section 94901(b)(2).)

are a large number of functions that the Bureau must perform as part of its qualitative review and assessment of every branch site included in an initial application for approval to operate, irrespective of whether the educational programs offered are degree programs or non-degree programs.

The Bureau is not aware of any basis in the Act, or basis in reason, for distinguishing between institutions that offer non-degree programs and those that offer degree programs by charging a separate fee for each site at which instruction is offered for the former, and not charging that fee for the latter. To the contrary, Section 94901(a) of the Act explicitly states that the fee for an approval to operate and offer degree programs shall be based on the number of sites, as well as the number of educational programs included in an application.

As stated above, each site included in an application for approval to operate generates costs for the Bureau to conduct a qualitative assessment of each site. Therefore, the Bureau believes that in order to comply with the Legislature's intent that application fees reflect the Bureau's costs to perform the qualitative review and assessment, the Bureau should charge a fee for each site included in an application for approval of degree programs, just as it does for an application for approval of non-degree programs.

The Bureau determined its costs to perform those functions, and has set that amount in its fee schedule as its basic fee for every branch site included in an initial application for approval of degree programs. That fee is reflected in the Bureau's proposed fee schedule, attached as Appendix A to this ISR. Again, in order to allow for a potential need to increase fees over time due to inflation, the maximum basic fee for a main site contained in this subdivision was calculated by using the fee reflected in the Bureau's fee schedule for an initial application for approval of degree programs at a branch site, and applying to that figure the current CPI on an annual basis for a two-year period.¹⁷

Section 94742 of the Act defines a satellite as an auxiliary classroom, and prohibits an institution from maintaining permanent records at the satellite. Because the activities performed at a satellite are significantly less than those performed at a main or branch site, the functions that the Bureau must perform for every satellite site included in an initial application for approval of degree programs are more limited. Nonetheless, there remain certain functions that the Bureau must perform as part of its qualitative review and assessment of every satellite site included in an initial application for approval of degree programs that the Bureau must perform. The cost to perform those functions was calculated, and the basic fee reflected in the fee schedule for each satellite site

¹⁷ For each fee contained in these regulations relating to a qualitative review and assessment, the maximum fee proposed in these regulations was calculated in that same manner – by taking the Bureau's estimated cost to perform the functions required for the particular activity and applying thereto the current Consumer Price Index on an annual basis for a two-year period. In contrast, the fees relating to a qualitative review and assessment contained in the Bureau's proposed fee schedule reflect the Bureau's current estimated costs to perform the functions required for the particular activity. For that reason, the amount of a fee reflected in the Bureau's proposed fee schedule will in all cases be less than the maximums the Bureau is proposing in these regulations.

included in an initial application reflects that cost. Once again, the maximum basic fee for a satellite site contained in this subdivision reflects the basic fee plus an amount that reflects the current CPI on an annual basis for a two-year period.

In addition, as discussed above, the Bureau incurs costs specific to its qualitative review and assessment with respect to each educational program offered at each of the institution's sites. The level of review, and the time required for a review, of a degree program is significantly more than for a non-degree program; thus, the Bureau's costs to perform that function are greater for a degree program than for a non-degree program.

Additionally, because an institution must comply with some different and additional standards for those educational programs it offers that are subject to Article 7 of the Act (the Maxine Waters School Reform and Student Protection Act of 1989), the functions that the Bureau must perform as part of its qualitative review and assessment of a non-degree program that is subject to Article 7 are greater than for a non-degree program that is not subject to Article 7. Thus, the Bureau incurs additional costs to conduct a qualitative review and assessment where the educational program is subject to Article 7.

Therefore, as reflected in the workload data in Appendices B and C of the EFIS, the Bureau's costs, and its proposed fees in its fee schedule, vary by the type of educational program offered.

Even though a branch may not offer an educational program that is not approved to be offered at the main site, there still are a number of functions specific to offering the educational program at the branch that the Bureau must perform for every educational program offered at a branch site included in an initial application for approval of degree programs. The Bureau's costs to perform those functions are reflected in the workload data contained in Appendices B and C of the EFIS, in the Bureau's proposed fee schedule, and in this subdivision (adjusted by the CPI).

The same analysis applies with respect to each educational program offered at each satellite site, although the functions that must be performed, and the concomitant costs, are greatly reduced. Those costs also are reflected in the amount of the fee to be assessed for each educational program offered at a satellite site.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with a qualitative review and assessment of an institution and its educational programs. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for approval.

Subdivision (c):

- Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessment for a qualitative review and assessment for an Initial Application for Approval to Operate reflect the Bureau's costs to perform the qualitative review and assessment.
- Specific Purpose: To establish the maximum amount an institution that offers only non-degree programs is required to pay for the Bureau to conduct a qualitative review and assessment of the institution and its educational programs included in an initial application for approval to operate.
- Factual Basis: All of the same analysis and explanation discussed above with respect to subdivision (b) applies to this subdivision. The only exception is that this subdivision establishes the maximum fees for an initial application for approval to operate where the institution does not offer any degree programs. Therefore, this subdivision does not reflect any fees relating to degree programs.
- Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with a qualitative review and assessment of an institution and its educational programs. The cost for each time amount is calculated as a total cost to process an application and is used as a basis for the fees for the application for approval.

Subdivision (d):

- Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessment for a qualitative review and assessment for an Initial Application for Approval to Operate reflect the Bureau's costs to perform the qualitative review and assessment.
- Specific Purpose: To clarify that in addition to the fees which must be paid pursuant to this section, an institution's reimbursement to the Bureau of expenses incurred by the site review team during an on-site qualitative review and assessment of an institution and its educational programs.
- Factual Basis: So that an institution is aware of all of the costs associated with an initial application for approval to operate for which the institution is requesting approval. This subdivision clarifies that, in addition to the fees established in this section, an institution is required to reimburse the Bureau for the expenses incurred by the site review team in conducting an on-site qualitative review and assessment of the institution.
- Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with a qualitative review and

assessment of an institution and its educational programs. The cost for each time amount is calculated as a total cost to process an application and is used as a basis for the fees for the application for approval.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932, Education Code.

§74010.2. Fees For a Qualitative Review and Assessment of an Application for Re-approval to Operate

Subdivision (a):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for a re-approval to operate reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish a fee structure that accurately complies with the Legislature's intent and reflects the cost to the Bureau to conduct a qualitative review and assessment of an institution and its educational programs when the institution is seeking a re-approval to operate.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act, including the maximum amount to be charged for the Bureau to perform a qualitative review of an institution seeking re-approval of its educational programs. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

Further, Section 94901(a) of the Act – which is contained in Article 8 and is applicable specifically to degree programs – provides, with respect to degree programs, that if an application is for re-approval, “the institution need only submit information necessary to document any changes made since the time its previous application was filed with the council [Bureau]. Fees for renewal applications will be based on the actual costs involved in the administrative review process.” A concomitant provision applicable to non-degree programs is contained in Section 94915(c)(4) Act. Moreover, Section 94840 of the Act – which is contained in Article 6 and is applicable to all institutions and educational programs – provides that the re-approval application “need only contain a description of any changes made by the institution since the time its last application was reviewed by the council [Bureau]. Fees for processing the renewal application shall be based on the number and types of changes it contains.”

These last two provisions have been the source of some confusion for institutions and the public. Therefore, a detailed discussion of the interpretation of those provisions within the context of the Act is called for.

A. Relevant Statutory Provisions Relating to the Bureau’s Duties in a Re-approval.

Section 94840 of the Act¹⁸ states that a renewal or re-approval application must be “acted upon as provided in Sections 94802, 94804, and 94835, and Section 94900 or 94915, whichever is applicable.”

Section 94804(c) states that “[f]ollowing review of the application and any other further information submitted by the applicant, or required in conformity with Article 8 (commencing with Section 94900) and Article 9 (commencing with Section 94915), and any investigation of the applicant as the council [Bureau] deems necessary or appropriate, the council [Bureau] shall grant or deny approval to operate to the applicant.”

Section 94804 states that the Bureau’s review of the re-approval application “shall include a determination of the institution’s financial responsibility.” It also establishes criteria and processes for the Bureau’s conduct of that determination, including special provisions applicable to parent corporations to the extent that the institution relies on the parent corporation’s assets to meet the Act’s financial requirements.

Section 94835, also specifically made applicable to re-approvals by Section 94840, requires that the Bureau “review and investigate all institutions, programs, and courses of instruction approved under this chapter.” It also requires that institutions being investigated by the Bureau give the Bureau “immediate access to the institution’s primary administrative location and sites of investigation”

Section 94900(a), which applies to degree programs, provides, in pertinent part, that “The council [Bureau] shall not issue an approval . . . until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined” that the institution meets the minimum standards listed in the remainder of that subdivision. Subdivision (b) of that section specifically identifies elements of the institution and its educational programs that are subject to the Bureau’s qualitative review and assessment.

Section 94901(a) provides, in pertinent part, that:

- (a) The council [Bureau] shall conduct a qualitative review and assessment of the institution. It also shall conduct a qualitative review and assessment of all

¹⁸ All further references in this ISR to “Section” where the section number begins with “9” are references to sections of the Act (Education Code).

programs offered except continuing education programs and programs that are exclusively avocational or recreational in nature. The review shall include the items listed in subdivision (b) of Section 94900, through a comprehensive on-site review process, performed by a qualified visiting committee impaneled by the council [Bureau] for that purpose.

Subdivision (b) of that section identifies the considerations that are to affect the Bureau's determination of the number of sites that will be inspected as part of "its review process."

Section 94901(c) provides that within 90 days of the receipt of a completed application, the Bureau shall impanel a visiting committee to conduct the on-site qualitative review and assessment of an institution offering degree programs.

Section 94915, contains similar provisions relating to non-degree programs, with the exception that the on-site qualitative review and assessment may be conducted by a representative of the Bureau; however, the Bureau, instead, may impanel a visiting committee to conduct the on-site qualitative review and assessment. It prohibits the Bureau from renewing an institution's approval to operate "until the council [Bureau] has conducted a qualitative review and assessment of the operations of the institution," and has determined that the institution meets a variety of explicit prerequisites.

B. Statutory Provisions Relating to the Contents of a Re-approval Application.

As stated above, Section 94840 of the Act states, in pertinent part, that, "The reapproval application need only contain a description of any changes made by the institution since the time its last application was reviewed by the council [Bureau]."

As also indicated above, Section 94901(a) of the Act, which applies to degree programs, provides, in pertinent part, that:

If the application is for renewal of an existing approval, the institution need only submit information necessary to document any changes made since the time its previous application was filed with the council [Bureau]. Fees for renewal applications will be based on the actual costs involved in the administrative review process.

Similarly, Section 94915(c)(4), which applies to non-degree programs, provides that:

(4) If the application is for reapproval of an existing approval, the institution need only submit information necessary to document any changes made since the time its previous application was filed with the council [Bureau]. Fees for reapproval applications shall be based on the actual costs involved in the administrative review process.

Section 94802, which is explicitly made applicable to re-approvals pursuant to Section 94840, provides that:

(a) Each institution desiring to operate in this state shall make application to the council [Bureau], upon forms to be provided by the council [Bureau]. The application shall include, as a minimum, at least all of the following:

- (1) A catalog published, or proposed to be published, by the institution containing the information specified in the criteria adopted by the council [Bureau]. The catalog shall include specific dates as to when the catalog applies.
- (2) A description of the institution's placement assistance, if any.
- (3) Copies of media advertising and promotional literature.
- (4) Copies of all student enrollment agreements or contract forms and instruments evidencing indebtedness.
- (5) The name and California address of a designated agent upon whom any process, notice, or demand may be served.
- (6) The information specified in Section 94808.
- (7) The institution's most current financial report as described in Section 94806.

(b) Each application shall be signed and certified under oath by the owners of the school or, if the school is incorporated,

- by the principal owners of the school (those who own at least 10 percent of the stock), or by the corporate officers or their designee.
- (c) Following review of the application and any other further information submitted by the applicant, or required in conformity with Article 8 (commencing with Section 94900) and Article 9 (commencing with Section 94915), and any investigation of the applicant as the council [Bureau] deems necessary or appropriate, the council [Bureau] either shall grant or deny approval to operate to the applicant.

Section 94808(a), which applies to re-approval applications pursuant to Sections 94840 and 94802(a)(6), provides that the following information must be submitted to the Bureau annually by each institution that holds an approval to operate:

- (1) The total number of students enrolled, by level of degree or type of diploma program.
- (2) The number of degrees and diplomas awarded, by level of degree.
- (3) The degree levels offered.
- (4) Program completion rates.
- (5) The schedule of tuition and fees required for each term, program, course of instruction, or degree offered.
- (6) Financial information demonstrating compliance with subdivisions (b) and (c) of Section 94804 and subdivisions (b) and (c) of Section 94855, if applicable.
- (7) Institutions having a probationary or conditional status shall submit an annual report reviewing their progress in meeting the standards required for approval status.
- (8) Any additional information that the council [Bureau] may prescribe.

Pursuant to Section 94802(a)(6), that information also must be included in an application, which includes an application for re-approval.

C. Analysis of What Information Must be Contained in a Re-approval Application.

The above-quoted provisions demonstrate that the Act sometimes distinguishes between the approval process and the re-approval process, or between an approval application and a re-approval application.¹ When it does so, it identifies to which type of approval the provision applies. In general, when the Act refers to an “application for approval” or to an “application” the reference includes both an application for an initial approval and an application for re-approval.

Although the portions of Sections 94901(a) and 94915(c)(4) quoted above, and only the sentence in Section 94840 that states that a re-approval application need only include a description of the changes that have occurred since the last application, read in isolation, could lead one to conclude that a re-approval application need only contain a description of the changes made by the institution since its last application, that conclusion is not tenable in light of the Bureau’s review obligations in a re-approval situation.

As discussed in the Preface, in interpreting a statutory scheme the guiding principle is the broad Legislative intent of the statutory scheme. A review and harmonization of all of the sections quoted above, leads one to conclude that the re-approval application must, at a minimum, include all of the information specified in Section 94802, as specifically required by Section 94840.

Application to a specific situation of Sections 94901(a) and 94915(c)(4), and the sentence in Section 94840 that provides that a re-approval application need include only the changes that have occurred since the last application, confirms the common sense of this approach. For example, if an institution had not made any changes in its programs and operations since its last application, a literal application of Sections 94901(a) and 94915(c)(4) would result in the institution submitting to the Bureau a completely blank application. The application would not reflect the name or address of the institution, a certification by the institution’s owners, or any other of the most basic information because that information had not changed. It is easy to see that a literal interpretation of Sections 94901(a) and 94915(c)(4) could lead to ludicrous results. Clearly, a re-approval application must contain some minimum amount of information, even if that information has not changed since the institution’s last application.

In addition to the institution’s name, address, and other relevant identifying information, Section 94802 sets forth that minimum amount of information which must be included in any application, including an application for re-approval. That interpretation of the Act also makes good common sense

because the information required in Section 94802 consists of the information that is most likely to reflect any changes made by the institution (such as the institution's catalog), information that is critical to student protections (such as placement assistance, media advertising, and the enrollment agreement), information that likely would have changed since the institution's last application (financial report), and identification of the institution's owners and agent for service of process.

Section 94804 is made applicable to re-approvals by Section 94840. Section 94804 requires that the Bureau's qualitative review and assessment of the institution include a determination of whether the institution is financially responsible, and establishes the criteria an institution must meet in order to be considered financially responsible. In order for the Bureau to be able to make that determination, an institution must include in its application complete and current information concerning its assets and liabilities, as specifically required by Section 94808(a)(6). Section 94808 also applies to re-approval applications pursuant to Section 94802(a)(6), as does Section 94806's description of the institution's most current financial report pursuant to Section 94802(a)(7). Neither Section 94802, nor Sections 94806 or 94808 contain any provision exempting a re-approval application from their scope of application.

Therefore, while reading Sections 94901(a) and 94915(c)(4), and the sentence in Section 94840 that provides that a re-approval application need include only the changes that have occurred since the last application, in isolation, might lead one to conclude that an application for re-approval need include only the information necessary to document any changes the institution has made since its last application, interpreting all of the relevant portions of the Act in harmony leads to the conclusion that an application for re-approval must contain not only any information necessary to document any changes the institution has made since its last application, but also the information specified in Sections 94802 (which includes the information required by Section 94808, and to some degree Section 94806), and 94804, irrespective of whether that information has changed since the institution's last application.

That interpretation is further supported by the fact that portions of Sections 94901(a), (b), and (c) quoted above reflect that the Act requires that the Bureau conduct the same two-step qualitative review and assessment process -- a qualitative review and assessment of the application, and an on-site qualitative review and assessment -- for both all initial applications for approval and all applications for re-approval. Section 94915 contains similar provisions applicable to non-degree programs, and results in the same conclusion. Those same provisions reflect that, in both the approval and re-approval context, the Bureau must determine whether the institution, at the time of the qualitative review and assessment, meets the Act's applicable minimum standards, and qualifies for an approval to operate. Moreover, Section 94835, made applicable to re-approvals by Section 94840, evidences a specific legislative intent that a

review of an application may be as broad and comprehensive as the Bureau finds necessary in order to determine whether the institution complies with all of the Act's applicable minimum standards and qualifies for an approval to operate.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated a qualitative review and assessment of an institution, and its educational programs, which seeks re-approval. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for approval.

Subdivision (b):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for a re-approval to operate reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish the maximum amount that an institution that offers one or more degree programs, or both degree programs and non-degree programs, is required to pay for the Bureau to conduct a qualitative review and assessment for re-approval of the institution and its educational programs.

Factual Basis: As discussed above with respect to the annual fees and the fees for an initial application for approval to operate, since assuming responsibility for implementing and enforcing the Act, the Bureau has attempted to analyze its workload, and to assess whether its fee structure needs to be adjusted to more closely reflect the Legislature's intent regarding fees as discussed above in the Preface to this ISR. In analyzing its fee structure and making its recommendations for changes thereto, the Bureau has attempted to focus on assuring that its fee structure is fair and equitable by imposing the Bureau's costs, to the extent possible, on the cost-causer. Documentation reflecting the Bureau's analysis of its workload relating to an initial application for approval to operate that includes one or more degree programs is contained in Appendix B of the EFIS. That documentation supports the need for a variety of changes in the manner in which fees are assessed.

The same analysis was done with respect to an application for re-approval to operate as was done for an application for initial approval to operate. Therefore, the discussion contained in the Factual Basis for subdivision (b) of Section 74010, above, applies equally here, but for the sake of brevity will not be repeated.

In addition the factors on which the Act requires that any application fee be based, as discussed in the Factual Basis for subdivision (a) of this section, the fee for a re-approval application must take into consideration the number of

changes included in a re-approval application. In reviewing its workload with respect to an application for re-approval, the Bureau determined that an institution conceivably could make any one or more of a myriad of changes to its operations. It would be impossible for the Bureau to categorize and charge a fee for each of them.

The changes that would require the most additional work for the Bureau to complete its qualitative review and assessment of the institution and its educational programs would be the addition of an educational program, or the addition of a branch or satellite site. As to those changes, the Bureau determined that its costs for a qualitative review and assessment would be sufficiently similar to the Bureau's costs for a qualitative review and assessment of an already existing educational program, or an already existing branch or satellite, for which the institution is seeking re-approval. Therefore, the fees reflected in subdivision (b) are to be applied in both instances.

For example, if an institution's application for re-approval includes one main site and two branch sites, the institution would be required to pay the basic fee for re-approval for a main site, and the basic fee for re-approval for each of two branch sites included in the application. Of course, the institution also would be required to pay the applicable fee for each educational program offered at the main site, and at each branch site.

If that same institution included in its application for re-approval the addition of a third branch site, and one satellite site, the institution also would be required to pay the basic fee for re-approval for the third branch site, and the basic fee for re-approval of a satellite site. If the institution intended to offer at the new branch site two educational programs it currently offered at its main site, the institution also would be required to pay, for each of the two educational programs, the fee for the particular types of program offered at a branch site.

If that same institution intended to begin offering a new educational program at its main site, at each of its three branch sites, and at its satellite site, the institution also would be required to pay the fee associated with the particular type of educational program offered at a main site, the fee associated with the particular type of educational program offered at a branch site for each of its three branches, and the fee associated with the particular type of educational program offered at a satellite site.

In that way, the re-approval fee paid by an institution reflects, as accurately as possible, the number and types of changes included in the re-approval application.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated a qualitative review and assessment of an

institution, and its educational programs, which seeks re-approval. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for approval.

Subdivision (c):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for a re-approval to operate reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish the maximum amount that an institution that offers only non-degree programs is required to pay for the Bureau's qualitative review and assessment relating to a re-approval of the institution and its educational programs.

Factual Basis: All of the same analysis and explanation discussed above with respect to subdivision (b) applies to this subdivision. The only exception is that this subdivision establishes the maximum fees for an application for re-approval to operate where the institution does not offer any degree programs. Therefore, this subdivision does not reflect any fees relating to degree programs.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated a qualitative review and assessment of an institution, and its educational programs, which seeks re-approval. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for approval.

Subdivision (d):

Problem Addressed: Institutions may not understand that the fees contained in this section are in addition to the institution's responsibility for the expenses incurred by the site review team.

Specific Purpose: To clarify that in addition to the fees which an institution must pay pursuant to this section, an institution also is responsible for reimbursement to the Bureau of expenses incurred by the site review team during an on-site qualitative review and assessment of an institution and its educational programs in response to the institution's application for re-approval.

Factual Basis: So that an institution is aware of all of the costs associated with an application for re-approval to operate for which the institution is responsible, this subdivision clarifies that, in addition to the fees established in this section, an institution is required to reimburse the Bureau for all of the expenses incurred by the site review team in conducting an on-site qualitative review and assessment of the institution and its educational programs.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated a qualitative review and assessment of an institution, and its educational programs, which seeks re-approval. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for approval.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94840, 94900, 94901, 94905, 94915, 94932(c), Education Code.

§74010.4. Fees For a Qualitative Review and Assessment of an Application for Amended Approval to Operate - Addition of a Branch

Subdivision (a):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a branch site reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish a fee structure that accurately complies with the Legislature's intent and reflects the cost to the Bureau to conduct a qualitative review and assessment of the institution and its educational programs for amended approval to operate when the institution is seeking to add a branch.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

Section 94932(c)(1) of the Act also states that "The council [Bureau] shall adopt a fee schedule for all institutions approved under this chapter, including the maximum amounts to be charged for an institution's initial application and annual renewal." While this section specifically includes initial application and annual renewal fees, it does not limit to those categories the fees that the Bureau may charge. In other words, while this section specifically includes initial application and annual renewal fees, it does not limit fees to those categories.

Although the Act does not specifically mention an application for amended approval to operate, it has several provisions which can be interpreted to authorize one.

Section 94901(j) of the Act, which applies to degree programs, provides that:

An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution

applied for approval to operate, and shall not offer any educational program or degree title at a campus that has not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the council [Bureau] first approves the offering of the program or degree title after determining that it satisfies the minimum standards established by this section [sic, should be Section 94900].

Similarly, Section 94915(g), which applies to non-degree programs, provides, in pertinent part, that:

If an institution approved to operate in California applies for approval to operate an additional site location that has not been previously approved by the council [Bureau], the institution shall file an operational plan for the additional site location as described in subdivision (f). The council [Bureau] shall evaluate the additional site location as provided in subdivision (f). The council [Bureau] also may evaluate the institution as provided in subdivisions (b) and (c) before determining whether to grant to the institution temporary or final approval to operate the additional site location. . . .

Additionally, Section 94830(o) provides that it is grounds for the Bureau to deny an institution's application for approval or re-approval, or to revoke an institution's approval, if the institution conducts "business or instructional services at any location not approved by the council [Bureau]."

Thus, the Act clearly prohibits an institution from operating a learning site that has not been approved by the Bureau. That means that either an institution is prohibited from opening a new learning site until the time for its re-approval (which could be as long as five years from the date of the institution's initial application), where it would include the new learning site in its application for re-approval, or the institution must be able to apply for approval from the Bureau to begin operating a new learning site during the institution's current approval period. Prohibiting an institution from opening a new learning site more often than once every five years could be construed as an unreasonable restraint on trade. Allowing an institution to apply to begin operating a new

learning site during the effective period of the institution's approval to operate is the only reasonable response to this dilemma.

The next question that must be answered is whether an institution that wishes to open a new learning site must file a complete initial application for approval to operate, or whether the Bureau can require that the institution file something less than an initial application – an application for amended approval. Based on the statutes cited above, it seems clear that the Bureau is within its authority to require that an institution who wishes to open a new learning site file an initial application for approval to operate for that new learning site. (See, e.g., Section 94915(g).) However, taking that approach would result in an increase in the number of initial applications that must be filed with the Bureau, in increased workload for both the Bureau and the institutions that must file the additional initial applications, and in increased fees that must be paid by the institutions.

It is axiomatic that where a state agency has the authority to do or require a greater act, it has the authority to do or require a subset of that greater act. The Bureau has determined that although the Bureau must perform many of the same functions in performing a qualitative review and assessment of an application for amended approval to add a branch, there are a few functions that need not be performed in that situation. Therefore, the Bureau has concluded, as did the Council, that an institution that plans to open a new learning site may file an application for amended approval to operate and add a new branch.

As discussed at length above in the Preface and with respect to other sections of these regulations, the Act is clear that the Bureau has the authority to charge an application fee for an initial application for approval to operate. The Bureau also is charged with establishing a fee schedule for applications that reflect the Bureau's costs for processing the application, and with establishing a fee schedule that is sufficient to fund the Bureau's operations. For all of those reasons, it seems clear that where the Bureau has the authority to require that an institution submit an application seeking Bureau action, the Bureau has the authority to impose a fee for the activities that the Bureau must undertake to process that application, conduct the required review, and make a determination on the application. If one were to conclude that the Bureau does not have the authority to charge a fee for the filing of an amended application, the result would be that an institution would be required to file an initial application for the addition of a branch or satellite, for which the Bureau clearly has the authority to charge a fee.

The established fee structure enables the Bureau to recover the costs incurred by the Bureau during its qualitative review and assessment of an institution's amended application, and the expenses incurred in the amended approval process, and provides a more equitable basis reflecting consideration of the type, size, and complexity of the qualitative review and assessment and which reflects the Bureau's actual costs in conducting the qualitative review and assessment.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a branch. The cost for each time amount is calculated as a total cost to process an amended application, and is used as a basis for the fees for the application for amended approval to operate.

Subdivision (b):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a branch site reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose To establish the maximum amount that an institution that offers one or more degree programs, or both degree programs and non-degree programs, is required to pay for the Bureau to conduct a qualitative review and assessment relating to an amended application for approval to operate where the institution seeks to add a branch site.

Factual Basis: All of the analysis and discussion contained above with respect to Section 74010(b) applies to this subdivision, except that references to an initial application would, for purposes of this section, relate to an application for amended approval to operate seeking to add a branch site. For purposes of brevity, that analysis and discussion will not be repeated here.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a branch. The cost for each time amount is calculated as a total cost to process an amended application, and is used as a basis for the fee for the application for amended approval to operate.

Subdivision (c):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a branch site reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish the maximum amount that an institution that offers only non-degree programs is required to pay for the Bureau to conduct a qualitative review and assessment relating to an application for amended approval to operate where the institution is seeking to add a branch site.

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| Factual Basis: | All of the same analysis and explanation discussed above with respect to subdivision (b) applies to this subdivision. The only exception is that this subdivision establishes the maximum fees for an application for amended approval to operate to add a new branch where the institution does not intend to offer any degree programs. Therefore, this subdivision does not reflect any fees relating to degree programs. |
| Underlying Data: | The Bureau prepared a workload data worksheet, attached as Appendix C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a branch. The cost for each time amount is calculated as a total cost to process an amended application, and is used as a basis for the fee for the application for amended approval to operate. |
| <u>Subdivision (d):</u> Problem Addressed: | The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a branch site reflect the Bureau's costs to perform the qualitative review and assessment. |
| Specific Purpose: | To clarify that in addition to the fees which an institution must pay pursuant to this section, an institution also is responsible for reimbursement to the Bureau of all of the expenses incurred by the site review team during an on-site qualitative review and assessment of an institution and its education programs conducted in response to an institution's application for amended approval to operate - add a branch site. |
| Factual Basis: | So that an institution is aware of all of the costs associated with an application for amended approval to operate to add a branch site for which the institution is responsible, this subdivision clarifies that, in addition to the fees established in this section, an institution is required to reimburse the Bureau for all of the expenses incurred by the site review team in conducting an on-site qualitative review and assessment of the institution and its educational programs relating to the application for amended approval. |
| Underlying Data: | The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a branch. The cost for each time amount is calculated as a total cost to process an amended application, and is used as a basis for the fee for the application for amended approval to operate. |

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932, Education Code.

§74010.6. Fees For a Qualitative Review and Assessment of an Application for Amended Approval to Operate - Addition of a Satellite

Subdivision (a):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a satellite site reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish a fee structure that accurately complies with the Legislature's intent and reflects the cost to the Bureau to conduct a qualitative review and assessment of the institution and its educational programs for amended approval to operate when the institution is seeking to add a satellite.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a satellite. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Subdivision (b):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a satellite site reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish the maximum amount that an institution that offers one or more degree programs, or both degree programs and non-degree programs, is required to pay for the Bureau to conduct a qualitative review and assessment relating to an application for amended approval to operate when the institution is seeking to add a satellite.

Factual Basis: All of the analysis and discussion contained above with respect to Section 74010(b) applies to this subdivision, except that references to an initial application would, for purposes of this section, relate to an application for amended approval to operate seeking to add a satellite site. For purposes of brevity, that analysis and discussion will not be repeated here.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a satellite. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Subdivision (c):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a satellite site reflect the Bureau's costs to perform the qualitative review and assessment.

Specific Purpose: To establish the maximum amount that an institution that offers only non-degree programs is required to pay for the Bureau to conduct a qualitative review and assessment relating to an application for amended approval to operate when the institution is seeking to add a satellite.

Factual Basis: All of the same analysis and explanation discussed above with respect to subdivision (b) applies to this subdivision. The only exception is that this subdivision establishes the maximum fees for an application for amended approval to operate to add a new satellite site where the institution does not intend to offer any degree programs. Therefore, this subdivision does not reflect any fees relating to degree programs.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a satellite. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Subdivision (d):

Problem Addressed: Institutions may not understand that the fees contained in this section are in addition to the institution's responsibility for the expenses incurred by the site review team.

Specific Purpose: To clarify that in addition to the fees which an institution must pay pursuant to this section, an institution also is responsible for reimbursement to the Bureau of all of the expenses incurred by the site review team during an on-site qualitative review and assessment of an institution and its education programs conducted in response to an institution's application for amended approval to operate and add a satellite site.

Factual Basis: So that an institution is aware of all of the costs for which it is responsible that are associated with an application for amended approval to operate to add a satellite site, this subdivision clarifies that, in addition to the fees established in this section, an institution is required to reimburse the Bureau for all of the expenses incurred by the site review team in conducting an on-site qualitative review and assessment of the institution and its educational programs relating to the application for amended approval to add a satellite site.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - add a satellite. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c), Education Code.

§74010.8. Fees For a Qualitative Review and Assessment of an Application for Amended Approval to Operate - Addition of a New Program or Substantive Change in a Program

Subdivision (a):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a new educational program, or to substantially change an existing educational program, reflect the Bureau's costs to perform the qualitative review and assessment with respect to the institution and the new or changed educational program.

Specific Purpose: To establish a fee structure that accurately complies with the Legislature's intent and reflects the cost to the Bureau to conduct a qualitative review and assessment for amended approval to operate when the institution is seeking to add a new educational program or substantially change an educational program.

Factual Basis: Although the Act does not specifically mention an application for amended approval to operate, it does contain several provisions which can be interpreted to authorize one.

Section 94901(j) of the Act, which applies to degree programs, provides that:

An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution applied for approval to operate, and shall not offer any educational program or degree title

at a campus that has not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the council [Bureau] first approves the offering of the program or degree title after determining that it satisfies the minimum standards established by this section [sic, should be Section 94900].

Section 94915(h) of the Act provides that:

No institution shall offer a course or program of instruction, training, or study at a campus that had not offered the course or program at the time the institution applied for approval to operate that campus unless the council first approves the offering of the course or program after determining that it satisfies the minimum standards established in subdivision (b).

Additionally, Section 94830(o) provides that it is grounds for the Bureau to deny an institution's application for approval or re-approval, or to revoke an institution's approval, if the institution conducts "business or instructional services at any location not approved by the council [Bureau]."

Thus, the Act clearly prohibits an institution from offering an educational program that has not been approved by the Bureau. That means that once an institution obtains an approval to operate, either the institution is prohibited from offering any new educational programs until the time for its re-approval (which could be as long as five years from the date of the institution's initial approval), at which time it would include the new educational program in its application for re-approval, or the institution must be able to apply for approval from the Bureau to begin offering new educational program during the institution's current approval period. Prohibiting an institution from adding a new educational program more often than once every five years could be construed as an unreasonable restraint on trade. Allowing an institution to apply to begin offering a new educational program during the effective period of the institution's approval to operate is the only reasonable response to this dilemma.

The next question that must be answered is whether an institution that wishes to offer a new educational program must file a complete initial application for approval to operate, or whether the Bureau can require that the institution file something less than an initial application – an application for amended approval. Based on the statutes cited above, it seems clear that the Bureau would be within its authority to require that an institution who wishes to offer a new educational program file an initial application for approval to operate for that new learning

site. (See, e.g., Section 94915(h).) However, taking that approach would result in an increase in the number of initial applications that must be filed with the Bureau, in increased workload for both the Bureau and the institutions that must file the additional initial applications, and in increased fees that must be paid by the institutions.

It is axiomatic that where a state agency has the authority to do or require a greater act, it has the authority to do or require a subset of that greater act. The Bureau has analyzed what information it needs to determine whether a new educational program meets the Act's applicable minimum requirements, and has determined what functions the Bureau must perform in order to conduct the qualitative review and assessment necessary to make that determination. The Bureau has concluded, as did the Council, that an institution that plans to offer a new educational program may file an application for amended approval to operate seeking to add the new educational program.

As discussed at length above in the Preface and with respect to other sections of these regulations, the Act is clear that the Bureau has the authority to charge an application fee for an initial application for approval to operate. The Bureau also is charged with establishing a fee schedule for applications that reflect the Bureau's costs for processing the application, and with establishing a fee schedule that is sufficient to fund the Bureau's operations. For all of those reasons, it seems clear that where the Bureau has the authority to require that an institution submit an application seeking Bureau action, the Bureau has the authority to impose a fee for the activities that the Bureau must undertake to process that application, conduct the required review, and make a determination on the application. If one were to conclude that the Bureau does not have the authority to charge a fee for the filing of an amended application, the result would be that an institution would be required to file an initial application for the addition of a new educational program. The Bureau clearly has the authority to charge a fee for such an initial application.

The former Council and its regulations required that an institution who wished to offer a new educational program must file an application for amended approval. However, it does not appear that the former Council required that an application for amended approval be filed when an institution sought to make changes to an educational program. The Bureau's experience in administering this program has caused it to face the issue of at what point may an educational program be changed so much that it no longer is the program that was approved but rather is a substantially different program.

Section 70000(cc) of these proposed regulations define a substantive change in an educational program offered by an institution to mean: (1) an increase or decrease of 25% or more in the number of hours in a degree or non-degree program; or, (2) an increase or decrease of 25% or more in the content or mode of instruction of a degree or non-degree program. It specifically excludes from

this definition a change in the content of the educational program, which is made solely to update technology related to the educational program, irrespective of whether the content is changed by 25% or more.

The Bureau has carefully analyzed this issue and has determined that when an institution changes an existing program to the extent that it falls within the definition of a substantive change in an educational program, contained in Section 70000(cc) of these regulations, the institution is effectively offering a new educational program. Therefore, the institution should be required to file an application for amended approval to operate to change the educational program.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - addition of a new program or substantive change in program. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Subdivision (b):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a new educational program, or to substantially change an existing educational program, reflect the Bureau's costs to perform the qualitative review and assessment with respect to the institution and the new or changed educational program.

Specific Purpose: To establish the maximum amount that an institution is required to pay for the qualitative review and assessment to be conducted by the Bureau with respect to an application for amended approval to operate where the institution is seeking to add a new degree program, or is seeking to substantially change a previously approved educational program, that is offered at a main, branch, or satellite site.

Factual Basis: All of the analysis and discussion contained above with respect to Section 74010(b) applies to this subdivision, except that references to an initial application would, for purposes of this section, relate to an application for amended approval to operate seeking to add a new educational program, or to substantively change a previously approved educational program. For the sake of brevity, that analysis and discussion will not be repeated here.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - addition of a new program or substantive change in program. The cost for each time amount is calculated as a total cost to process an application,

and is used as a basis for the fee for the application for amended approval to operate.

Subdivision (c):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking to add a new educational program, or to substantially change an existing educational program, reflect the Bureau's costs to perform the qualitative review and assessment with respect to the institution and the new or changed educational program.

Specific Purpose: To establish the maximum amount that an institution is required to pay for the qualitative review and assessment to be conducted by the Bureau with respect to an application for amended approval to operate where the institution is seeking to add a new non-degree program, or is seeking to substantially change a previously approved educational program, that is offered at a main site, branch site, or satellite.

Factual Basis: All of the same analysis and explanation discussed above with respect to subdivision (b) applies to this subdivision. The only exception is that this subdivision establishes the maximum fees for an application for amended approval to operate seeking to add a new educational program or to substantively change a previously approved educational program where the institution does not intend to offer any degree programs. Therefore, this subdivision does not reflect any fees relating to degree programs.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - addition of a new program. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Subdivision (d):

Problem Addressed: Institutions may not understand that the fees contained in this section are in addition to the institution's responsibility for the expenses incurred by the site review team.

Specific Purpose: To clarify that in addition to the fees which an institution must pay pursuant to this section, an institution also is responsible for reimbursement to the Bureau of all of the expenses incurred by the site review team during an on-site qualitative review and assessment of an institution and its educational programs conducted in response to an institution's application for amended approval to operate seeking to add a new educational program, or to make a substantive change to a previously approved educational program.

Factual Basis: An institution needs to be aware of all of the costs for which it is responsible that are associated with an application for amended approval to operate to add a new educational program, or to make a substantive change to a previously approved educational program. This subdivision clarifies that, in addition to the fees established in this section, an institution is required to reimburse the Bureau for all of the expenses incurred by the site review team in conducting an on-site qualitative review and assessment of the institution and its educational programs relating to the application for amended approval to operate seeking to add a new educational program, or to make a substantive change to a previously approved educational program.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - addition of a new program. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fees for the application for amended approval to operate.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c), Education Code.

§74010.12. Fee For a Qualitative Review and Assessment of an Application for an Amended Approval to Operate - Change of Location

Subdivision (a):

Problem Addressed: The Bureau's current fee schedule and regulations do accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its educational programs where the institution submits an application for amended approval seeking to change the location of a learning site reflect the Bureau's costs to perform the qualitative review and assessment with respect to the new site.

Specific Purpose: To establish the maximum amount an institution is required to pay for each learning site at which it intends to change location.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

Although the current regulations are not as clear as they should be, they provide for a fee for an institution's application for amended approval to change the location of a main site or branch site. (See 5 California Code of Regulations

sections 74008(h) and (I), and 74010 (h).) However, for reasons unknown to the Bureau, they do not address the issue of a change in the location of a satellite site.

Perhaps the most obvious reason why it is necessary to require that an institution file an application for amended approval seeking to change the location of any learning site, including a satellite, prior to making that change, is the fact that in order to properly administer and enforce the Act, the Bureau needs to know the locations at which an institution is operating and offering educational programs. The Bureau needs to assure that its records are current so that it can track institutions, so that it can conduct site inspections as required by Sections 94835 and 94836 of the Act, and so that it can maintain a directory of institutions accessible to students and the public as required by Section 94774(e) of the Act.

More importantly, however, before an institution is allowed to change the location of a learning site, the Bureau needs to assure that the new facilities are appropriate and adequate for the educational programs to be offered at the site. In order to make that determination, the Bureau may need to conduct an on-site inspection of the new location. In addition, the Bureau also needs to assure that the institution has changed its catalog and related solicitation and student materials to reflect the new location, that the institution will implement a proper plan to inform students of the change in location, and that, if the educational program is subject to Article 7 of the Act, the institution has complied with Section 94873(h).

The reasons why it is necessary to require that an institution file an application for amended approval seeking to change the location of any learning site prior to making that change can be just as compelling with respect to a change in the location of a satellite as they are with respect to a main or a branch site.

As discussed in the Preface and at several points throughout this ISR, where the Bureau has authority to require that an institution file an application seeking Bureau action, the Act clearly provides the Bureau with the authority to charge a fee for performing the qualitative review and assessment that is necessary to process the application and determine whether the institution and its educational programs qualify for approval.

The Bureau determined that it must collect fees to cover the costs associated with amended approval to operate - change of location, pursuant to Article 10 of the Private Postsecondary and Vocational Education Act.

The established fee structure enables the Bureau to recover the costs incurred by the Bureau during its qualitative review and assessment of an institution's amended application - change of location, and provides a more equitable basis reflecting consideration of the type of the qualitative review and assessment and which reflects the Bureau's actual costs in conducting the qualitative review and assessment.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - change of location. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fee for the application for amended approval to operate.

Subdivision (b):

Problem Addressed: Institutions may not understand that the fees contained in this section are in addition to the institution's responsibility for the expenses incurred by the site review team.

Specific Purpose: To clarify that in addition to the fees which an institution must pay pursuant to this section, an institution also is responsible for reimbursement to the Bureau of all of the expenses incurred by the site review team during an on-site qualitative review and assessment of an institution and its educational programs conducted in response to an institution's application for amended approval to operate seeking to change the location of a learning site.

Factual Basis: As discussed above with respect to Section 74010.2(a), the Bureau has the authority to conduct an on-site qualitative review as part of its qualitative review and assessment of any application for an approval to operate. That discussion applies to this subdivision as well, and is incorporated herein by reference. An institution needs to be aware of all of the costs for which it is responsible that are associated with an application for amended approval to operate to change the location of a learning site. This subdivision clarifies that, in addition to the fees established in this section, an institution is required to reimburse the Bureau for all of the expenses incurred by the site review team in conducting an on-site qualitative review and assessment of the institution and its educational programs relating to the application for amended approval to operate seeking to change location.

Underlying Data: N/A

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c), Education Code.

§74010.14. Fee For a Qualitative Review and Assessment of an Application for Amended Approval to Operate – Change in Ownership or Shift in Control

Subdivision (a):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its programs where the institution submits an application for amended approval seeking a change in ownership or a shift in control reflect the Bureau's costs to perform the qualitative review and

assessment with respect to the institution and the new ownership or shift in control.

Specific Purpose: To establish a fee structure that accurately complies with the Legislature's intent and reflects the cost to the Bureau to conduct a qualitative review and assessment for amended approval to operate when the institution is seeking a change in ownership or a shift in control.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - change in ownership or shift in control. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fee for the application for amended approval to operate.

Subdivision (b):

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its educational programs where the institution submits an application for amended approval seeking a change of ownership or shift in control of the institution and its educational programs.

Specific Purpose: To establish the maximum amount that an institution that offers one or more degree programs, or both degree programs and non-degree programs, is required to pay for the Bureau to conduct a qualitative review and assessment with respect to an application for amended approval to operate if the institution is seeking a change of ownership or a shift in control of the institution and its educational programs.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix B to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - change of ownership or shift in control. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fee for the application for amended approval to operate.

Subdivision (c):

Problem Addressed: The Bureau's current fee schedule and regulations do accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its educational programs where the institution submits an application for amended approval seeking a change of ownership or shift in control of the institution and its educational programs.

Specific Purpose: To establish the maximum amount that an institution that offers only non-degree programs is required to pay for the Bureau to conduct a qualitative review and assessment with respect to an application for amended approval to operate if the institution is seeking a change of ownership or a shift in control of the institution and its educational programs.

Factual Basis: All of the analysis and discussion contained above with respect to Section 74010(b) applies to this subdivision, except that references to an initial application would, for purposes of this section, relate to an application for amended approval to operate seeking a change of ownership or shift in control. For the sake of brevity, that analysis and discussion will not be repeated here.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendix C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - change of ownership or shift in control. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fee for the application for amended approval to operate.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c), Education Code.

§74010.16. Fee For a Qualitative Review and Assessment of an Application for an Amended Approval to Operate - Change in the Title of a Program

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its educational programs where the institution submits an application for amended approval seeking to change the title of a program reflect the Bureau's costs to perform the qualitative review and assessment with respect to the new title.

Specific Purpose: To establish the maximum amount that an institution is required to pay for the qualitative review and assessment to be conducted by the Bureau with respect to an application for amended approval to operate where the institution is seeking to change the title of a program.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

It is necessary to require that an institution file an application for amended approval seeking to change the title of a program because, for the Bureau to properly administer and enforce the Act, the Bureau needs to know whether the institution has complied with the Act and the regulations with respect to the new program title. The Bureau needs to assure that the change of the program title is accurately disclosed to students in the institution's catalog and advertising, and that the program title accurately reflects the instruction provided by the institution.

As discussed in the Preface and at several points throughout this ISR, where the Bureau has authority to require that an institution file an application seeking Bureau action, the Act clearly provides the Bureau with the authority to charge a fee for performing the qualitative review and assessment that is necessary to process the application and determine whether the institution and its educational programs qualify for approval.

The Bureau determined that it must collect fees to cover the costs associated with amended approval to operate - change in the title of a program, pursuant to Article 10 of the Private Postsecondary and Vocational Education Act.

The established fee structure enables the Bureau to recover the costs incurred by the Bureau during its qualitative review and assessment of an institution's amended application - change in the title of a program, and provides a more equitable basis reflecting consideration of the type of the qualitative review and assessment and which reflects the Bureau's actual costs in conducting the qualitative review and assessment.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - change in the title of a program. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fee for the application for amended approval to operate.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932(c), Education Code.

§74010.18. Fee For a Qualitative Review and Assessment of an Application for an Amended Approval to Operate - Change of Institution Name

Problem Addressed: The Bureau's current fee schedule and regulations do not accurately conform to the Legislature's intent that the fee assessed for a qualitative review and assessment of an institution and its educational programs where the institution submits an application for amended approval seeking to change the name of the institution reflect the Bureau's costs to perform the qualitative review and assessment with respect to the new name.

Specific Purpose: To establish the maximum amount that an institution is required to pay for the qualitative review and assessment to be conducted by the Bureau with respect to an application for amended approval to operate where the institution is seeking to change the name of the institution.

Factual Basis: Section 94932(c)(1) of the Act requires that the Bureau adopt a fee schedule for all institutions approved under the Act. Additionally, the Act requires that the Bureau's fees be sufficient to provide the Bureau with adequate funds to operate, and that the fees cover the costs to perform its administrative functions.

It is necessary to require that an institution file an application for amended approval seeking to change the name of the institution because the Bureau needs to maintain accurate records relating to the institutions under its jurisdiction. More importantly, the Bureau needs to assure that the change of the institution's name is accurately disclosed to students in the institution's catalog and advertising. Additionally, the Bureau must ensure that the institution maintains compliance with Section 74150 of the current regulations, which limits an institution's ability to use the word "university."

As discussed in the Preface and at several points throughout this ISR, where the Bureau has authority to require that an institution file an application seeking Bureau action, the Act clearly provides the Bureau with the authority to charge a fee for performing the qualitative review and assessment that is necessary to process the application and determine whether the institution and its educational programs qualify for approval.

The established fee structure enables the Bureau to recover the costs incurred by the Bureau during its qualitative review and assessment of an institution's amended application seeking to change the institution's name, and provides a more equitable basis reflecting consideration of the level of the qualitative review and assessment that must be conducted and which reflects the Bureau's actual costs in conducting the qualitative review and assessment.

Underlying Data: The Bureau prepared a workload data worksheet, attached as Appendices B and C to the EFIS, which includes a detailed analysis of the amount of time required to complete the various tasks associated with an application for amended approval to operate - change of institution name. The cost for each time amount is calculated as a total cost to process an application, and is used as a basis for the fee for the application for amended approval to operate.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94900, 94901, 94905, 94915, 94932, Education Code.

§74010.46. Fees for Agents Permits and Agency Authorization

Problem Addressed: The Bureau must recover its costs incurred in conducting the review and qualification determination.

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| Specific Purpose: | To establish the fee for the Bureau to conduct a review and qualification determination for an agency and agent permit. |
| Factual Basis: | <p>Article 11 of the Act requires that a person who wishes to provide agent services or an entity that wishes to provide agency services, must file an application for a permit or authorization, and that the Bureau conduct a review and qualification determination prior to issuing an agency or agent permit. Article 11 of the Act contains comprehensive requirements relating to a person who acts as an agent, and an entity that acts as an agency for an institution. Among other things, it requires that a person who wishes to act as an agent for an institution sign a statement that he or she has read the Act and the Bureau's regulations. (See Section 94940(a)(1). It also requires that the person must post a bond and provide proof of the bond with his or her application for a permit. (Section 94940(a)(2).) An agent that represents more than one institution must obtain a separate agent's permit and bond for each institution it represents. (Section 94940(b).)</p> <p>Similarly, an agency must post a bond and provide proof thereof with its application for a permit. (Section 94942(a)(2). It also must include in its application, among other things, a current financial statement (Section 94942(a)(1)), and a copy of its student disclosure statement, which must contain a number of specific disclosures (Section 94942(a)(3). The agency also is subject to an on-site inspection. (See Section 94942(b).)</p> <p>Thus, the review and qualification determination which the Bureau must conduct with respect to an application for an agent or agency permit is not merely a superficial one. So that agencies and agents are informed of the potential costs relating to providing agent or agency services, the Bureau needs to establish the fee for each review and qualification determination.</p> |

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94920, 94932, Education Code.

§74010.48. Fee for Review and Qualification Determination for an Application for a Certificate of Authorization

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| Problem Addressed: | The Bureau must recover its costs incurred in conducting the review and qualification determination for an application for a certificate of authorization for service. |
| Specific Purpose: | To establish the fee for the Bureau to conduct a qualification determination for a certificate of authorization for service, and to establish the basis for determining the circumstances for which a separate certificate of authorization for service is required to be submitted by an individual who provides instruction in a non-degree program at an institution. |

Factual Basis: Section 94920 of the Act requires that a person who provides instruction for a non-degree educational program, or who acts as a director, financial aid director, or financial aid officer file an application for a certificate of authorization for service, and that the Bureau conduct a review and qualification determination of the application prior to issuing a certificate of authorization for service. Section 94920(b)(1)(B) requires that in order for an individual to be eligible for a certificate of authorization for service, he or she must provide evidence to the Bureau that he or she possesses several qualifications, including, “Verification that he or she possess a combination of at least three years’ experience and training or education in the occupation or job title category for which the certification is sought. Section 73670 of the current regulations provide that an applicant for a certificate of authorization for service must include in his or her application, “A statement of the area of competence in which the individual will serve and a detailed description of the applicant’s education and employment background that establishes that the applicant possesses adequate academic, experiential, and professional qualifications to perform in that area of competence.”

An instructor who wishes to provide instruction in more than one subject area, must possess the required years of education, experience, or training for each subject area that he or she wishes to teach. The subject areas that are taught in institutions subject to the Bureau’s jurisdiction are very broad. Therefore, a certificate of authorization for service could not simply authorize the licensee to teach at an institution subject to the Bureau’s jurisdiction because the person might be quite qualified to teach cosmetology, but not truck driving, or to teach math, but not English. Thus, a certificate of authorization for service authorizes the licensee to provide instruction only in the subject area reflected in the certificate. If the person wishes to provide instruction in different subject areas, he or she must apply for, and obtain, a separate certificate of authorization for service for each of the different subject areas which the person wishes to teach. So that institutions and instructors are informed of the potential costs relating to a certificate of authorization for service, the Bureau needs to establish the fees to cover its costs to conduct the required review and qualification determination. Institutions and instructors also need to know when an instructor who teaches more than one subject is required to obtain more than one certificate of authorization for service and, thus, is required to file a separate application and pay separate fees for each certificate of authorization for service needed.

Note: Authority cited: Sections 94774(a)-(d), and (g), 94774.5, 94778, Education Code. Reference cited: Sections 94940, 94932, Education Code.

§74012.

Short Course Institutions

Problem Addressed: The Act does not contain any special provisions relating to "short course" programs other than to provide for registration of certain types of educational programs that might fall into that category.

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| Specific Purpose: | To repeal the fees that were established for institutions that offered short course programs. |
| Factual Basis: | <p>The Act does not contain any provisions relating to a “short course” program or institution. The Act does not define a “short course” program or institution, nor does it authorize special or different fees for a “short course” program or institution. The Bureau’s current regulations (which were promulgated by the former Council) contain this section which establishes a special set of fees relating to a “short course” institution. “Short course institution” is defined only in the Council’s fee schedule.</p> <p>The Act, as revised by AB 71, establishes a registration program for five types of educational programs: continuing education, license examination preparation, intensive English language, short-term career, and short-term seminar. It is likely that an educational program that would have fallen within the definition relating to a “short course institution” would now be subject to registration. Therefore, there does not appear to be a need to maintain this special category of fees in the current regulations.</p> |
| Underlying Data: | N/A |
| §74014. | Institutions Subject to Section 94315 of the Code. |
| Problem Addressed: | Under the new Act, this Section is obsolete. |
| Specific Purpose: | To repeal the fees that were established for institutions that offered short-term seminar programs. |
| Factual Basis: | Under the old Act, institutions were authorized to offer "short-term seminar" programs, and were required by regulation to pay fees for those courses that were less than the fees required to be paid by institutions that offered approved programs. The new Act categorizes those programs as short- term seminar training programs, which are subject to registration. Repealing the fees for short term seminar programs eliminates confusion for institutions regarding which fees they are required to pay and makes the regulations consistent with the new Act. |
| §74016. | Agents and Agencies |
| Problem Addressed: | The Bureau wishes to re-organize and re-number its regulations so that all of the provisions establishing fees are grouped together by number. |
| Specific Purpose: | To repeal the fees in Section 74016 so that they can be added to the new Section 74010.46. |
| Factual Basis: | Repealing the fees for agents and agencies and re-adopting those fees as Section 74010.46 creates greater uniformity in the regulations. |

Underlying Data: N/A

§74018. Certificates of Authorization

Problem Addressed: The Bureau wishes to re-organize and re-number its regulations so that all of the provisions establishing fees are grouped together by number.

Specific Purpose: To repeal the fees in Section 74018 so that they can be added to the new Section 74010.48.

Factual Basis: Repealing the fees for agents and agencies and re-adopting those fees as Section 74010.48 creates greater uniformity in the regulations.

Underlying Data: N/A

Business Impact:

These regulations will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No alternative that was considered would be either more effective than or equally as effective as and less burdensome to affected private persons than the proposed regulations.

¹ See, e.g., that portion of Sections 94901(a) and 94915(c)(4) quoted above.